

CERTIFICATION OF ENROLLMENT

SENATE BILL 5316

Chapter 99, Laws of 2001

57th Legislature
2001 Regular Session

EDUCATIONAL INSTITUTIONS--EMPLOYMENT

EFFECTIVE DATE: 4/19/01

Passed by the Senate March 10, 2001
YEAS 46 NAYS 2

BRAD OWEN

President of the Senate

Passed by the House April 11, 2001
YEAS 87 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

CLYDE BALLARD

Speaker of the House of Representatives

Approved April 19, 2001.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5316** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK

Secretary

FILED

April 19, 2001 - 5:17 p.m.

**Secretary of State
State of Washington**

SENATE BILL 5316

Passed Legislature - 2001 Regular Session

State of Washington

57th Legislature

2001 Regular Session

By Senators Prentice and Winsley; by request of Employment Security Department

Read first time 01/18/2001. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to reasonable assurance of employment for employees
2 of educational institutions; amending RCW 50.44.053 and 50.44.080;
3 adding a new section to chapter 50.44 RCW; creating new sections; and
4 declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 50.44 RCW
7 to read as follows:

8 The legislature finds the interests of the state and its citizens
9 are best served by a strong community and technical college system. As
10 described by their establishing legislation, these two-year
11 institutions are an independent, unique, and vital section of our
12 state's higher education system, separate from both the common school
13 system and other institutions of higher education. Paramount to that
14 system's success is the attraction and retention of qualified
15 instructors. In order to attract and retain instructors, those who are
16 subject to uncertainties of employment must be provided assurance their
17 economic needs are addressed. Over time, a change in hiring patterns
18 has occurred, and for the last decade a substantial portion of
19 community and technical college faculty are hired on a contingent, as

1 needed, basis. That contingent nature distinguishes them from the more
2 stable, majority employment found in the common school system and in
3 the other institutions of higher education. Contingent assurances of
4 future employment are often speculative and do not rise to the level of
5 other forms of assurance. As such, assurances conditioned on forecast
6 enrollment, funding, or program decisions are typically not reasonable
7 assurances of employment.

8 It is the intent of the legislature that reasonable assurance
9 continue to apply to all employees of educational institutions as
10 required by federal provisions and RCW 50.44.080.

11 **Sec. 2.** RCW 50.44.053 and 1998 c 233 s 3 are each amended to read
12 as follows:

13 (1) The term "reasonable assurance," as used in RCW 50.44.050,
14 means a written, verbal, or implied agreement that the employee will
15 perform services in the same capacity during the ensuing academic year
16 or term as in the first academic year or term. A person shall not be
17 deemed to be performing services "in the same capacity" unless those
18 services are rendered under the same terms or conditions of employment
19 in the ensuing year as in the first academic year or term.

20 (2) An individual who is tenured or holds tenure track status is
21 considered to have reasonable assurance, unless advised otherwise by
22 the college. For the purposes of this section, tenure track status
23 means a probationary faculty employee having an opportunity to be
24 reviewed for tenure.

25 (3) In the case of community and technical colleges assigned the
26 standard industrial classification code 8222 or the north American
27 industry classification system code 611210 for services performed in a
28 principal administrative, research, or instructional capacity, a person
29 is presumed not to have reasonable assurance under an offer that is
30 conditioned on enrollment, funding, or program changes. It is the
31 college's burden to provide sufficient documentation to overcome this
32 presumption. Reasonable assurance must be determined on a case-by-case
33 basis by the total weight of evidence rather than the existence of any
34 one factor. Primary weight must be given to the contingent nature of
35 an offer of employment based on enrollment, funding, and program
36 changes.

1 **Sec. 3.** RCW 50.44.080 and 1971 c 3 s 25 are each amended to read
2 as follows:

3 (~~RCW 50.44.010 through 50.44.070 have been enacted to meet the~~
4 ~~requirements imposed by the federal unemployment tax act as amended by~~
5 ~~91-373. Internal references in any section of chapter 3, Laws of 1971~~
6 ~~to the provisions of that act are intended only to apply to those~~
7 ~~provisions as they existed as of January 28, 1971.~~)

8 In view of the importance of compliance of this chapter (~~(3, Laws~~
9 ~~of 1971))~~ with the federal unemployment tax act, any ambiguities
10 contained herein should be resolved in a manner consistent with the
11 provisions of that act. (~~Considerable weight has been given to the~~
12 ~~commentary contained in that document entitled "Draft Legislation to~~
13 ~~Implement the Employment Security Amendments of 1970 . . . H.R. 14705",~~
14 ~~published by the United States Department of Labor, Manpower~~
15 ~~Administration, and that commentary should be referred to when~~
16 ~~interpreting the provisions of chapter 3, Laws of 1971.)~~) Department
17 of labor guidelines implementing this act should be referred to when
18 interpreting the provisions of this chapter.

19 Language in this chapter (~~(3, Laws of 1971))~~ concerning the
20 extension of coverage to employers entitled to make payments in lieu of
21 contributions should, in a manner consistent with the foregoing
22 paragraph, be construed so as to have a minimum financial impact on the
23 employers subject to the experience rating provisions of this title.

24 NEW SECTION. **Sec. 4.** If any part of this act is found to be in
25 conflict with federal requirements that are a prescribed condition to
26 the allocation of federal funds to the state or the eligibility of
27 employers in this state for federal unemployment tax credits, the
28 conflicting part of this act is inoperative solely to the extent of the
29 conflict, and the finding or determination does not affect the
30 operation of the remainder of this act. Rules adopted under this act
31 must meet federal requirements that are a necessary condition to the
32 receipt of federal funds by the state or the granting of federal
33 unemployment tax credits to employers in this state.

34 NEW SECTION. **Sec. 5.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the
36 remainder of the act or the application of the provision to other
37 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 6.** This act applies to weeks that begin after
2 March 31, 2001.

3 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 immediately.

 Passed the Senate March 10, 2001.

 Passed the House April 11, 2001.

 Approved by the Governor April 19, 2001.

 Filed in Office of Secretary of State April 19, 2001.