

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1089

62nd Legislature
2011 Regular Session

Passed by the House April 14, 2011
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 11, 2011
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1089** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1089

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By House Higher Education (originally sponsored by Representative McCoy)

READ FIRST TIME 02/11/11.

1 AN ACT Relating to instructional materials provided in a
2 specialized format version; amending RCW 28B.10.916; and creating a new
3 section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the knowledge,
6 skill, and ability to succeed both academically and later in a chosen
7 profession are accumulated through myriad sources, including
8 instructional materials. Therefore, it is the intent of the
9 legislature to ensure that students provided with instructional
10 materials pursuant to RCW 28B.10.916 be permitted to retain those
11 materials if they so desire.

12 **Sec. 2.** RCW 28B.10.916 and 2004 c 46 s 1 are each amended to read
13 as follows:

14 (1) An individual, firm, partnership or corporation that publishes
15 or manufactures instructional materials for students attending any
16 public or private institution of higher education in the state of
17 Washington shall provide to the public or private institution of higher
18 education, for use by students attending the institution, any

1 instructional material in an electronic format mutually agreed upon by
2 the publisher or manufacturer and the public or private institution of
3 higher education. Computer files or electronic versions of printed
4 instructional materials shall be provided; video materials must be
5 captioned or accompanied by transcriptions of spoken text; and audio
6 materials must be accompanied by transcriptions. These supplemental
7 materials shall be provided to the public or private institution of
8 higher education at no additional cost and in a timely manner, upon
9 receipt of a written request as provided in subsection (2) of this
10 section.

11 (2) A written request for supplemental materials must:

12 (a) Certify that a student with a print access disability attending
13 or registered to attend a public or participating private institution
14 of higher education has purchased the instructional material or the
15 public or private institution of higher education has purchased the
16 instructional material for use by a student with a print access
17 disability;

18 (b) Certify that the student has a print access disability that
19 substantially prevents him or her from using standard instructional
20 materials;

21 (c) Certify that the instructional material is for use by the
22 student in connection with a course in which he or she is registered or
23 enrolled at the public or private institution of higher education; and

24 (d) Be signed by the coordinator of services for students with
25 disabilities at the public or private institution of higher education
26 or by the college or campus official responsible for monitoring
27 compliance with the Americans with disabilities act of 1990 (42 U.S.C.
28 12101 et seq.) at the public or private institution of higher
29 education.

30 (3) An individual, firm, partnership or corporation specified in
31 subsection (1) of this section may also require that, in addition to
32 the requirements in subsection (2) of this section, the request include
33 a statement signed by the student agreeing to both of the following:

34 (a) He or she will use the instructional material provided in
35 specialized format solely for his or her own educational purposes; and

36 (b) He or she will not copy or duplicate the instructional material
37 provided in specialized format for use by others.

1 (4) A public or private institution of higher education that
2 provides a specialized format version of instructional material
3 pursuant to this section may not require that the student return the
4 specialized format version of the instructional material, except that
5 if the institution has determined that it is not required to allow the
6 student to retain the material under the Americans with disabilities
7 act or other applicable laws, and the material was translated or
8 transcribed into a specialized format at the expense of the institution
9 and the cost to reproduce a copy of the translation or transcription is
10 greater than one hundred dollars, the institution may require that the
11 student return the specialized format version.

12 (5) If a public or private institution of higher education provides
13 a student with the specialized format version of an instructional
14 material, the media must be copy-protected or the public or private
15 institution of higher education shall take other reasonable precautions
16 to ensure that students do not copy or distribute specialized format
17 versions of instructional materials in violation of the copyright
18 revision((s)) act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

19 ((+5+)) (6) For purposes of this section:

20 (a) "Instructional material or materials" means textbooks and other
21 materials that are required or essential to a student's success in a
22 postsecondary course of study in which a student with a disability is
23 enrolled. The determination of which materials are "required or
24 essential to student success" shall be made by the instructor of the
25 course in consultation with the official making the request in
26 accordance with guidelines issued pursuant to subsection ((+9+)) (10)
27 of this section. The term specifically includes both textual and
28 nontextual information.

29 (b) "Print access disability" means a condition in which a person's
30 independent reading of, reading comprehension of, or visual access to
31 materials is limited or reduced due to a sensory, neurological,
32 cognitive, physical, psychiatric, or other disability recognized by
33 state or federal law. The term is applicable, but not limited to,
34 persons who are blind, have low vision, or have reading disorders or
35 physical disabilities.

36 (c) "Structural integrity" means all instructional material,
37 including but not limited to the text of the material, sidebars, the
38 table of contents, chapter headings and subheadings, footnotes,

1 indexes, glossaries, graphs, charts, illustrations, pictures,
2 equations, formulas, and bibliographies. Structural order of material
3 shall be maintained. Structural elements, such as headings, lists, and
4 tables must be identified using current markup and tools. If good
5 faith efforts fail to produce an agreement between the publisher or
6 manufacturer and the public or private institution of higher education,
7 as to an electronic format that will preserve the structural integrity
8 of instructional materials, the publisher or manufacturer shall provide
9 the instructional material in a verified and valid HTML format and
10 shall preserve as much of the structural integrity of the instructional
11 materials as possible.

12 (d) "Specialized format" means Braille, audio, or digital text that
13 is exclusively for use by blind or other persons with print access
14 disabilities.

15 ~~((+6))~~ (7) Nothing in this section is to be construed to prohibit
16 a public or private institution of higher education from assisting a
17 student with a print access disability through the use of an electronic
18 version of instructional material gained through this section or by
19 transcribing or translating or arranging for the transcription or
20 translation of the instructional material into specialized formats that
21 provide persons with print access disabilities the ability to have
22 increased independent access to instructional materials. If such
23 specialized format is made, the public or private institution of higher
24 education may share the specialized format version of the instructional
25 material with other students with print access disabilities for whom
26 the public or private institution of higher education is authorized to
27 request electronic versions of instructional material. The addition of
28 captioning to video material by a Washington public or private
29 institution of higher education does not constitute an infringement of
30 copyright.

31 ~~((+7))~~ (8) A specialized format version of instructional materials
32 developed at one public or private institution of higher education in
33 Washington state may be shared for use by a student at another public
34 or private institution of higher education in Washington state for whom
35 the latter public or private institution of higher education is
36 authorized to request electronic versions of instructional material.

37 ~~((+8))~~ (9) Nothing in this section shall be deemed to authorize

1 any use of instructional materials that would constitute an
2 infringement of copyright under the copyright revision act of 1976, as
3 amended (17 U.S.C. Sec. 101 et seq.).

4 ~~((+9))~~ (10) The governing boards of public and participating
5 private institutions of higher education in Washington state shall each
6 adopt guidelines consistent with this section for its implementation
7 and administration. At a minimum, the guidelines shall address all of
8 the following:

9 (a) The designation of materials deemed "required or essential to
10 student success";

11 (b) The determination of the availability of technology for the
12 conversion of materials pursuant to subsection ~~((+4))~~ (5) of this
13 section and the conversion of mathematics and science materials
14 pursuant to subsection ~~((+5))~~ (6)(c) of this section;

15 (c) The procedures and standards relating to distribution of files
16 and materials pursuant to this section;

17 (d) The guidelines shall include procedures for granting exceptions
18 when it is determined that an individual, firm, partnership or
19 corporation that publishes or manufactures instructional materials is
20 not technically able to comply with the requirements of this section;
21 and

22 (e) Other matters as are deemed necessary or appropriate to carry
23 out the purposes of this section.

24 ~~((+10))~~ (11) A violation of this chapter constitutes an unfair
25 practice under chapter 49.60 RCW, the law against discrimination. All
26 rights and remedies under chapter 49.60 RCW, including the right to
27 file a complaint with the human rights commission and to bring a civil
28 action, apply.

--- END ---