

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1089**

Chapter 356, Laws of 2011

(partial veto)

62nd Legislature  
2011 Regular Session

HIGHER EDUCATION--INSTRUCTIONAL MATERIALS--SPECIALIZED FORMATS

EFFECTIVE DATE: 07/22/11

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

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

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

BRAD OWEN

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**President of the Senate**

Approved May 16, 2011, 2:33 p.m., with  
the exception of Section 1 which is  
vetoed.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**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  
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.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

May 17, 2011

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1089**

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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.***

*\*Sec. 1 was vetoed. See message at end of chapter.*

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~~ 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.

Passed by the House April 14, 2011.  
Passed by the Senate April 11, 2011.  
Approved by the Governor May 16, 2011, with the exception of  
certain items that were vetoed.  
Filed in Office of Secretary of State May 17, 2011.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 1,  
Substitute House Bill 1089 entitled:

"AN ACT Relating to instructional materials provided in a  
specialized format version."

I am vetoing the intent section, Section 1 of the bill, because it is  
broader than the substantive language in the bill. Vetoing the intent  
section may avoid confusion and does not impede implementation of the  
bill.

For this reason I have vetoed Section 1 of Substitute House Bill 1089.

With the exception of Section 1, Substitute House Bill 1089 is approved."