

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2327

Chapter 335, Laws of 2020

66th Legislature
2020 Regular Session

POSTSECONDARY EDUCATIONAL INSTITUTIONS--SEXUAL MISCONDUCT

EFFECTIVE DATE: June 11, 2020

Passed by the House March 9, 2020
Yeas 95 Nays 1

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate March 6, 2020
Yeas 35 Nays 13

CYRUS HABIB

President of the Senate

Approved April 3, 2020 1:44 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2327** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

April 3, 2020

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2327

AS AMENDED BY THE SENATE

Passed Legislature - 2020 Regular Session

State of Washington 66th Legislature 2020 Regular Session

By House College & Workforce Development (originally sponsored by Representatives Pollet, Kilduff, Frame, Bergquist, Orwall, Wylie, and Appleton)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to addressing sexual misconduct at postsecondary
2 educational institutions; adding new sections to chapter 28B.112 RCW;
3 adding a new section to chapter 42.56 RCW; creating new sections; and
4 providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes that
7 Washington's postsecondary educational institutions are some of the
8 best schools in the nation, offering high quality education and life
9 experiences for thousands of students. Washington institutions strive
10 to create learning environments where all students can reach their
11 full potential. The legislature also recognizes that in instances in
12 which an employee of an institution engages in sexual misconduct
13 against a student, institutions do not consistently disclose that
14 information. The legislature declares that disclosure of such
15 information is a matter of public safety for all Washington students
16 as well as for students on campuses across the nation. The
17 legislature finds that sexual misconduct, which may include
18 harassment or assault, has serious public health and safety effects
19 on students in Washington. These effects may deprive students of
20 their opportunities to obtain an education which would otherwise
21 improve their lives and health, and that of their own children. Other

1 effects include an employee in a position of power and authority over
2 students causing irreversible harm to the physical and mental health
3 of students from sexual misconduct. The legislature finds that
4 students of any postsecondary educational institution in Washington
5 should be protected from their institution hiring an employee who has
6 been found to have committed sexual misconduct at another
7 postsecondary educational institution. The legislature, therefore,
8 also finds that postsecondary educational institutions in Washington
9 need to know if a prospective employee has been found to have
10 committed sexual misconduct while employed at another institution.
11 Therefore, the legislature intends to require postsecondary
12 educational institutions to inquire about and conduct reference
13 checks on any applicant the institution intends to extend an offer of
14 employment to, regarding whether the applicant has ever been found to
15 have committed, or is being investigated for, sexual misconduct. The
16 legislature finds that nondisclosure agreements which prevent an
17 institution from disclosing that an employee has committed sexual
18 misconduct create a high potential for students in jeopardy of being
19 victimized. Therefore, the legislature finds such nondisclosure
20 agreements between an employee and institution, pursuant to which the
21 institution agrees not to disclose findings of sexual misconduct
22 supported by a preponderance of evidence or not to complete an
23 investigation, are against public policy and should not be entered
24 into by any Washington postsecondary educational institution and
25 should not be enforced by Washington courts. Therefore, the
26 legislature intends to provide clarity and direction to postsecondary
27 educational institutions for disclosing substantiated findings of
28 sexual misconduct committed by its employees against students.

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 28B.112
30 RCW to read as follows:

31 The definitions in this section apply throughout this section and
32 sections 3 through 6 of this act unless the context clearly requires
33 otherwise.

34 (1) "Applicant" means a person applying for employment as
35 faculty, instructor, staff, advisor, counselor, coach, athletic
36 department staff, and any position in which the applicant will likely
37 have direct ongoing contact with students in a supervisory role or
38 position of authority. "Applicant" does not include enrolled students
39 who are applying for temporary student employment with the

1 postsecondary educational institutions, unless the student is a
2 graduate student applying for a position in which the graduate
3 student will have a supervisory role or position of authority over
4 other students. "Applicant" does not include a person applying for
5 employment as medical staff or for employment with an affiliated
6 organization, entity, or extension of a postsecondary educational
7 institution, unless the applicant will have a supervisory role or
8 position of authority over students.

9 (2) "Employee" means a person who is receiving or has received
10 wages as an employee from the postsecondary educational institutions
11 and includes current and former workers, whether the person is
12 classified as an employee, independent contractor, or consultant, and
13 is in, or had, a position with direct ongoing contact with students
14 in a supervisory role or position of authority. "Employee" does not
15 include a person who was employed by the institution in temporary
16 student employment while the person was an enrolled student unless
17 the student, at the time of employment, is or was a graduate student
18 in a position in which the graduate student has or had a supervisory
19 role or authority over other students. "Employee" does not include a
20 person employed as medical staff or with an affiliated organization,
21 entity, or extension of a postsecondary educational institution,
22 unless the employee has or had a supervisory role or position of
23 authority over students. A person who would be considered an
24 "employee" under this subsection, remains an "employee" even if the
25 person enrolls in classes under an institution's employee tuition
26 waiver program or similar program that allows faculty, staff, or
27 other employees to take classes.

28 (3) "Employer" includes postsecondary educational institutions in
29 this or any other state.

30 (4) "Postsecondary educational institution" means an institution
31 of higher education as defined in RCW 28B.10.016, a degree-granting
32 institution as defined in RCW 28B.85.010, a private vocational school
33 as defined in RCW 28C.10.020, or school as defined in RCW 18.16.020,
34 that participates in the state student financial aid program.

35 (5) "Sexual misconduct" includes, but is not limited to,
36 unwelcome sexual contact, unwelcome sexual advances, requests for
37 sexual favors, other unwelcome verbal, nonverbal, electronic, or
38 physical conduct of a sexual nature, sexual harassment, and any
39 misconduct of a sexual nature that is in violation of the
40 postsecondary educational institution's policies or has been

1 determined to constitute sex discrimination pursuant to state or
2 federal law.

3 (6) "Student" means a person enrolled at a postsecondary
4 educational institution and for whom educational records are
5 maintained.

6 NEW SECTION. **Sec. 3.** (1) By December 1, 2023, the public four-
7 year institutions of higher education shall report the following to
8 the governor and the appropriate committees of the legislature:

9 (a) Summaries of any campus climate assessments conducted since
10 the effective date of this section that are designed to gauge the
11 prevalence of sexual misconduct on college and university campuses;

12 (b) Efforts to reach out to and capture information from students
13 who have traditionally been marginalized or experience
14 disproportionate impacts of systemic oppression based on, for
15 example, race, ethnicity, nationality, sexual orientation, gender
16 identity, gender expression, and disability;

17 (c) How information obtained in the assessments was used to
18 design and improve policies, programs, and resources for the campus
19 community; and

20 (d) The impacts of this act on institutional hiring practices,
21 campus safety, and other relevant considerations.

22 (2) This section expires June 1, 2024.

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 28B.112
24 RCW to read as follows:

25 (1) Except as provided in subsection (2) of this section, any
26 provision of a settlement agreement executed subsequent to the
27 effective date of this section between a postsecondary educational
28 institution and an employee is against public policy and void and
29 unenforceable if the provision prohibits the employee, the
30 institution, a survivor, or any other person from disclosing that the
31 employee has either:

32 (a) Been the subject of substantiated findings of sexual
33 misconduct; or

34 (b) Is the subject of an investigation into sexual misconduct
35 that is not yet complete.

36 (2) A settlement agreement may contain provisions requiring
37 nondisclosure of personal identifying information of persons filing

1 complaints or making allegations and of any witnesses asked to
2 participate in an investigation of the allegations.

3 (3) Personal identifying information in a settlement agreement
4 that reveals the identity of persons filing complaints or making
5 allegations and of any witnesses asked to participate in an
6 investigation of the allegations is exempt from public disclosure
7 pursuant to section 7 of this act.

8 NEW SECTION. **Sec. 5.** A new section is added to chapter 28B.112
9 RCW to read as follows:

10 (1) Unless the victim of the alleged sexual misconduct requests
11 otherwise, when a postsecondary educational institution investigates
12 a complaint or allegation of sexual misconduct committed by an
13 employee against a student of the institution, the institution shall
14 complete the investigation whether or not the employee voluntarily or
15 involuntarily leaves employment with the institution. When the
16 institution completes its investigation, the institution shall make
17 written findings of whether the complaint or allegation is
18 substantiated.

19 (2)(a) A postsecondary educational institution shall include in
20 the employee's personnel file or employment records any substantiated
21 findings of sexual misconduct committed by the employee while the
22 employee was employed with the postsecondary educational institution.

23 (b) When disclosing records included in an employee's personnel
24 file or employment records under this section, the institution shall
25 keep personal identifying information of the complainant and any
26 witnesses confidential, unless disclosure of identifying information
27 is agreed to by the complainant or witnesses or required under law.

28 (c) Personal identifying information in an employee's file or
29 employment records that reveals the identity of the complainant and
30 any witnesses is exempt from public disclosure pursuant to section 7
31 of this act.

32 (3) For purposes of this section, postsecondary educational
33 institutions shall use a preponderance of the evidence standard when
34 determining whether findings are substantiated.

35 (4) For purposes of this section and section 6 of this act,
36 "substantiated" means the employee has committed sexual misconduct.

37 NEW SECTION. **Sec. 6.** A new section is added to chapter 28B.112
38 RCW to read as follows:

1 (1) Beginning October 1, 2020, prior to an official offer of
2 employment to an applicant, a postsecondary educational institution
3 shall request the applicant to sign a statement:

4 (a) Declaring whether the applicant is the subject of any
5 substantiated findings of sexual misconduct in any current or former
6 employment or is currently being investigated for, or has left a
7 position during an investigation into, a violation of any sexual
8 misconduct policy at the applicant's current and past employers, and,
9 if so, an explanation of the situation;

10 (b) Authorizing the applicant's current and past employers to
11 disclose to the hiring institution any sexual misconduct committed by
12 the applicant and making available to the hiring institution copies
13 of all documents in the previous employer's personnel, investigative,
14 or other files relating to sexual misconduct, including sexual
15 harassment, by the applicant; and

16 (c) Releasing the applicant's current and past employers, and
17 employees acting on behalf of that employer, from any liability for
18 providing information described in (b) of this subsection.

19 (2) Beginning July 1, 2021, prior to an official offer of
20 employment to an applicant, a postsecondary educational institution
21 shall:

22 (a) Request in writing, electronic or otherwise, that the
23 applicant's current and past postsecondary educational institution
24 employers provide the information, if any, described in subsection
25 (1)(b) of this section. The request must include a copy of the
26 declaration and statement signed by the applicant under subsection
27 (1) of this section; and

28 (b) Ask the applicant if the applicant is the subject of any
29 substantiated findings of sexual misconduct, or is currently being
30 investigated for, or has left a position during an investigation
31 into, a violation of any sexual misconduct policy at the applicant's
32 current and past employers, and, if so, an explanation of the
33 situation.

34 (3)(a) Pursuant to (c) of this subsection, after receiving a
35 request under subsection (2)(a) of this section, a postsecondary
36 educational institution shall provide the information requested and
37 make available to the requesting institution copies of documents in
38 the applicant's personnel record relating to substantiated findings
39 of sexual misconduct.

1 (b) Pursuant to (c) of this subsection, if a postsecondary
2 educational institution has information about substantiated findings
3 of a current or former employee's sexual misconduct in the employee's
4 personnel file or employment records, unless otherwise prohibited by
5 law, the institution shall disclose that information to any employer
6 conducting reference or background checks on the current or former
7 employee for the purposes of potential employment, even if the
8 employer conducting the reference or background check does not
9 specifically ask for such information.

10 (c) If, by the effective date of this section, a postsecondary
11 educational institution does not have existing procedures for
12 disclosing information requested under this subsection, the
13 institution must establish procedures to begin implementing the
14 disclosure requirements of this subsection no later than July 1,
15 2021.

16 (4) (a) The postsecondary educational institution or an employee
17 acting on behalf of the institution, who discloses information under
18 this section is presumed to be acting in good faith and is immune
19 from civil and criminal liability for the disclosure.

20 (b) A postsecondary educational institution is not liable for any
21 cause of action arising from nondisclosure of information by an
22 employee without access to official personnel records who is asked to
23 respond to a reference check.

24 (c) The duty to disclose information under this section is the
25 responsibility of the postsecondary educational institution to
26 respond to a formal request for personnel records relating to a
27 current or prior employee when requested by another employer.

28 (5) (a) When disclosing information under this section, the
29 postsecondary educational institution shall keep personal identifying
30 information of the complainant and any witnesses confidential, unless
31 the complainant or witnesses agree to disclosure of their identifying
32 information.

33 (b) Personal identifying information that reveals the identity of
34 the complainant and any witnesses is exempt from public disclosure
35 pursuant to section 7 of this act.

36 (6) Beginning October 1, 2020, a postsecondary educational
37 institution may not hire an applicant who does not sign the statement
38 described in subsection (1) of this section.

39 (7) Information received under this section may be used by a
40 postsecondary educational institution only for the purpose of

1 evaluating an applicant's qualifications for employment in the
2 position for which the person has applied.

3 (8) This section does not restrict expungement from a personnel
4 file or employment records of information about alleged sexual
5 misconduct that has not been substantiated.

6 (9) Public institutions of higher education shall share best
7 practices with all faculty and staff who are likely to receive
8 reference check requests about how to inform and advise requesters to
9 contact the institution's appropriate official office for personnel
10 records.

11 NEW SECTION. **Sec. 7.** A new section is added to chapter 42.56
12 RCW to read as follows:

13 (1) For the purposes of sections 2 through 6 of this act
14 regarding postsecondary educational institutions, personal
15 identifying information in an employee personnel file, student file,
16 investigation file, settlement agreement, or other files held by a
17 postsecondary educational institution that reveals the identity of
18 witnesses to or victims of sexual misconduct committed at the
19 postsecondary educational institution by an employee of the
20 institution are exempt from public disclosure and copying. If the
21 victim or witness indicates a desire for disclosure of the victim's
22 or witness' personal identifying information, such desire shall
23 govern.

24 (2) For purposes of this section, "witness" does not mean an
25 employee under investigation for allegations of sexual misconduct.

Passed by the House March 9, 2020.

Passed by the Senate March 6, 2020.

Approved by the Governor April 3, 2020.

Filed in Office of Secretary of State April 3, 2020.

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