

SENATE BILL REPORT

SB 5877

As Reported by Senate Committee On:
Law & Justice, February 3, 2022

Title: An act relating to antidiscrimination policies in institutions of higher education.

Brief Description: Addressing antidiscrimination policies in institutions of higher education.

Sponsors: Senators Conway, Lovick, Nguyen, Saldaña and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 1/31/22, 2/03/22 [DPS-WM, DNP].

Brief Summary of First Substitute Bill

- Increases the maximum Washington College Grant award for students attending private four-year not-for-profit institutions to be the equivalent of the maximum award at the public higher education institutions.
- Imports provisions from the Washington Law Against Discrimination to the law for student financial aid in higher education.
- Requires institutions of higher education participating in the Washington college grant program to either sign an affidavit that the institution will comply with antidiscrimination policies and practices required under the bill or opt-out of compliance.
- Establishes a new Washington college grant award level that is 85 percent of the maximum award for institutions of higher education that opt-out of compliance with antidiscrimination policies.
- Declares it an unfair practice for an institution of higher education that has signed an affidavit to engage in discriminatory practices.
- Authorizes the attorney general to investigate and enforce the requirements under this bill.
- Authorizes an individual to file suit if their rights have been violated.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5877 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen and Salomon.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Honeyford and Wagoner.

Staff: Tim Ford (786-7423)

Background: Washington College Grant. The State Need Grant was modified in 2019 and renamed the Washington College Grant (WCG). The WCG is the state's largest financial aid program and provides awards to low-income students to pursue postsecondary education.

The WCG is an entitlement program with guaranteed awards for those students who qualify. The WCG award amount varies based on the institution the student attends and the student's family income. For students attending the state's public institutions, the maximum award is tuition and services and activities fees for 15 quarter credit hours or the equivalent. For students attending private, four-year, not-for-profit higher education institutions, in 2019-20 the maximum award was \$9,739. The maximum award for students at private, four-year, not for-profit institutions may increase by no more than the tuition growth factor annually. An eligible student may receive a WCG for five years or up to 125 percent of the published length of the student's program. Part-time students receive prorated awards.

The tuition growth factor means an increase of no more than the average annual percentage growth rate of the median hourly wage for Washington for the previous 14 years as the wage is determined by the Bureau of Labor Statistics.

Washington Law Against Discrimination. The Washington Law Against Discrimination (WLAD) prohibits discriminatory practices in employment; places of public resort, accommodation, or amusement; real estate transactions; and credit and insurance. The law protects persons from discrimination based on their race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veterans, or military status. The law also protects persons from discrimination based on the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. WLAD prohibits retaliation against persons who oppose a discriminatory practice, and those who file health care and state employee whistleblower complaints.

Summary of Bill (First Substitute): Definitions from the WLAD are included in the definitions section of law for student financial aid programs at institutions of higher education and include the following terms:

- disability;
- dog guide;
- employer;
- marital status;
- national origin;
- person;
- race;
- service animal;
- sex; and
- sexual orientation.

The maximum WCG is changed for students attending private, four-year, not-for-profit institutions of higher education in Washington. The award is increased to be the equivalent of the maximum award at the public higher education institutions, or the individual institution's tuition for 15 quarter credit hours or the equivalent.

Every four years, institutions of higher education participating in the WCG program must either:

- sign an affidavit that the institution's policies and practices are in compliance with anti-discrimination provisions, or
- affirmatively opt out of anti-discrimination requirements.

Anti-discrimination provisions prohibit discrimination on the basis of race, creed, color, national origin, citizenship or immigration status, sex, age, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. The anti-discrimination requirements apply to the institution's education programs and activities for students, and for employment of any person.

For institutions that opt out of anti-discrimination requirements, students are entitled to only 85 percent of the WCG award. Institutions that take no action regarding the signing of the affidavit must be determined to have opted out of compliance.

It is an unfair practice if an institution which has signed an affidavit agreeing to comply with the anti-discrimination requirements then engages in the discriminatory practices prohibited. The attorney general may investigate violations on its own initiative, or in response to complaints and bring a civil cause of action in superior court to restrain the prohibited practices recover actual damages sustained, recover legal costs and fees, and pursue any other appropriate remedy under state or federal law. Institutions that have signed the affidavit but have engaged in an unfair practice are limited to 85 percent of the WCG program for a period of four years from the date of the decision.

In addition to investigation and enforcement by the attorney general, any person believed to be injured by a violation has a civil cause of action in court to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit and reasonable attorneys' fees or any other appropriate remedy authorized by state or federal law.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Adds categories for non-discrimination for consistency between subsections.
- Clarifies the investigative and enforcement authority of the attorney general.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: There is a need to have more parity of funding for college students at private schools. We need more funding for higher education in general. One of the ways to do this is to give access to the state grant program.

CON: This bill will impose a \$1500 penalty on students who choose a religious school that doesn't allow biological males identifying as female to participate in women sports and that would undermine the purpose of Title IX federal law. This bill would put pressure on institutions to eliminate single sex dormitories or facilities like locker rooms. Many religious institutions have policies regarding admissions and student conduct that reflect their sincerely held beliefs. These beliefs are admittedly about controversial issues like the definition of marriage, sexual morality, and the distinction between the sexes. At every state and at the federal level there has been respect and exemptions for religious issues. This bill would undermine a religious institutions ability to maintain those beliefs and policies.

Persons Testifying: PRO: Joe Nguyen, WA State Senate.

CON: Gregory Baylor, Alliance Defending Freedom.

Persons Signed In To Testify But Not Testifying: No one.