

CERTIFICATION OF ENROLLMENT  
**SECOND SUBSTITUTE HOUSE BILL 1522**

68th Legislature  
2023 Regular Session

Passed by the House March 8, 2023  
Yeas 94 Nays 0

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**Speaker of the House of  
Representatives**

Passed by the Senate April 5, 2023  
Yeas 48 Nays 0

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**President of the Senate**

Approved

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**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 **SECOND SUBSTITUTE HOUSE BILL 1522** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SECOND SUBSTITUTE HOUSE BILL 1522**

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Passed Legislature - 2023 Regular Session

**State of Washington**                      **68th Legislature**                      **2023 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Pollet, Leavitt, Berry, and Macri)

READ FIRST TIME 02/24/23.

1            AN ACT Relating to addressing sexual misconduct at scholarly or  
2 professional associations; amending RCW 28B.112.040 and 28B.112.080;  
3 and creating a new section.

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

5            NEW SECTION.    **Sec. 1.**    In 2020 the legislature established RCW  
6 28B.112.080 requiring colleges and universities statewide, both  
7 public and private, to ask job applicants to declare whether they had  
8 been the subject of substantiated findings of sexual misconduct by a  
9 current or previous employer, whether they are the subject of current  
10 investigations of sexual misconduct by their employer, or whether  
11 they resigned employment during an ongoing investigation. It requires  
12 postsecondary educational institutions to request documentation of  
13 substantiated findings or investigations prior to extending an offer  
14 of employment.

15            In academic settings, sexual misconduct can take place outside  
16 the context of employment. For example, an employee of one university  
17 might harass a student or employee of a different university in a  
18 professional setting such as a conference or meeting. A growing  
19 number of scholarly associations sponsoring conferences or other  
20 events have adopted codes of conduct and investigative procedures to  
21 address the problem of sexual misconduct in these contexts. The

1 legislature intends to expand the declaration required of applicants  
2 for employment to include substantiated findings by scholarly  
3 associations. Further, the legislature intends to expand the  
4 requirement to request documentation to include substantiated  
5 findings generated by scholarly associations.

6 **Sec. 2.** RCW 28B.112.040 and 2020 c 335 s 2 are each amended to  
7 read as follows:

8 The definitions in this section apply throughout this section and  
9 RCW 28B.112.050 through 28B.112.080 unless the context clearly  
10 requires otherwise.

11 (1) "Applicant" means a person applying for employment as  
12 faculty, instructor, staff, advisor, counselor, coach, athletic  
13 department staff, and any position in which the applicant will likely  
14 have direct ongoing contact with students in a supervisory role or  
15 position of authority. "Applicant" does not include enrolled students  
16 who are applying for temporary student employment with the  
17 postsecondary educational institutions, unless the student is a  
18 graduate student applying for a position in which the graduate  
19 student will have a supervisory role or position of authority over  
20 other students. "Applicant" does not include a person applying for  
21 employment as medical staff or for employment with an affiliated  
22 organization, entity, or extension of a postsecondary educational  
23 institution, unless the applicant will have a supervisory role or  
24 position of authority over students.

25 (2) "Association" means a scholarly or professional organization  
26 or learned society that sponsors activities or events for the benefit  
27 of individuals affiliated with postsecondary educational  
28 institutions, with a code of conduct forbidding sexual misconduct at  
29 such activities or events, and established investigative procedures  
30 for allegations that the code of conduct has been violated.

31 (3) "Employee" means a person who is receiving or has received  
32 wages as an employee from the postsecondary educational institutions  
33 and includes current and former workers, whether the person is  
34 classified as an employee, independent contractor, or consultant, and  
35 is in, or had, a position with direct ongoing contact with students  
36 in a supervisory role or position of authority. "Employee" does not  
37 include a person who was employed by the institution in temporary  
38 student employment while the person was an enrolled student unless  
39 the student, at the time of employment, is or was a graduate student

1 in a position in which the graduate student has or had a supervisory  
2 role or authority over other students. "Employee" does not include a  
3 person employed as medical staff or with an affiliated organization,  
4 entity, or extension of a postsecondary educational institution,  
5 unless the employee has or had a supervisory role or position of  
6 authority over students. A person who would be considered an  
7 "employee" under this subsection, remains an "employee" even if the  
8 person enrolls in classes under an institution's employee tuition  
9 waiver program or similar program that allows faculty, staff, or  
10 other employees to take classes.

11 ~~((3))~~ (4) "Employer" includes postsecondary educational  
12 institutions in this or any other state.

13 ~~((4))~~ (5) "Investigation" means a procedure initiated in  
14 response to a formal complaint, as defined in 34 C.F.R. Sec. 106.30,  
15 provided that the procedure fully complies with the provisions of 34  
16 C.F.R. Sec. 106.45.

17 (6) "Postsecondary educational institution" means an institution  
18 of higher education as defined in RCW 28B.10.016, a degree-granting  
19 institution as defined in RCW 28B.85.010, a private vocational school  
20 as defined in RCW 28C.10.020, or school as defined in RCW 18.16.020,  
21 that participates in the state student financial aid program.

22 ~~((5))~~ (7) "Sexual misconduct" includes, but is not limited to,  
23 unwelcome sexual contact, unwelcome sexual advances, requests for  
24 sexual favors, other unwelcome verbal, nonverbal, electronic, or  
25 physical conduct of a sexual nature, sexual harassment, and any  
26 misconduct of a sexual nature that is in violation of the  
27 postsecondary educational institution's policies or has been  
28 determined to constitute sex discrimination pursuant to state or  
29 federal law.

30 ~~((6))~~ (8) "Student" means a person enrolled at a postsecondary  
31 educational institution and for whom educational records are  
32 maintained.

33 (9) "Substantiated findings" means a written determination  
34 regarding responsibility as described in 34 C.F.R. Sec. 106.45(b)(7)  
35 prepared at the conclusion of an investigation, as amended by any  
36 appeals process.

37 **Sec. 3.** RCW 28B.112.080 and 2020 c 335 s 6 are each amended to  
38 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 by any association with which the applicant has, or has  
7 had, a professional relationship, is currently being investigated  
8 for, or has left a position during an investigation into, a violation  
9 of any sexual misconduct policy at the applicant's current and past  
10 employers, and, if so, an explanation of the situation;

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

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

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

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

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

37 (3)(a) Pursuant to (c) of this subsection, after receiving a  
38 request under subsection (2)(a) of this section, a postsecondary  
39 educational institution shall provide the information requested and  
40 make available to the requesting institution copies of documents in

1 the applicant's personnel record relating to substantiated findings  
2 of sexual misconduct.

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

12 (c) If, by June 11, 2020, a postsecondary educational institution  
13 does not have existing procedures for disclosing information  
14 requested under this subsection, the institution must establish  
15 procedures to begin implementing the disclosure requirements of this  
16 subsection no later than July 1, 2021.

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

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

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

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

34 (b) Personal identifying information that reveals the identity of  
35 the complainant and any witnesses is exempt from public disclosure  
36 pursuant to RCW 42.56.375.

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

1 (7) Information received under this section may be used by a  
2 postsecondary educational institution only for the purpose of  
3 evaluating an applicant's qualifications for employment in the  
4 position for which the person has applied.

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

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

13 (10) The student achievement council shall convene a work group  
14 and report to the legislature by November 30, 2024, regarding the  
15 ability of institutions of higher education to consider if applicants  
16 or current employees have committed sexual misconduct at meetings or  
17 conferences of academic and professional associations; and, how  
18 institutions of higher education and Washington agencies may  
19 encourage adoption of policies and procedures regarding sexual  
20 misconduct committed at such association events.

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