LEGISLATURE OF THE STATE OF IDAHO

Sixty-eighth Legislature First Regular Session - 2025

IN THE SENATE

SENATE BILL NO. 1198, As Amended in the House

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO HIGHER EDUCATION; PROVIDING LEGISLATIVE FINDINGS AND INTENT; AMENDING CHAPTER 59, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5909D, IDAHO CODE, TO DEFINE TERMS, TO PROHIBIT DIVERSITY, EQUITY, AND INCLUSION OFFICES AND OFFICERS AT INSTITUTIONS OF HIGHER EDUCATION, TO PROVIDE AN ALTERNATIVE USE FOR CERTAIN FUNDS, TO PROHIBIT DIVERSITY TRAININGS, TO PROHIBIT BIAS REPORTING SYSTEMS, TO PROHIBIT CERTAIN REQUIRED COURSES, TO PROVIDE FOR EXEMPTIONS FROM CERTAIN REQUIREMENTS, TO REQUIRE CERTAIN REPORTS, TO PROVIDE THE ATTORNEY GENERAL WITH CERTAIN ENFORCEMENT AUTHORITY, TO PROVIDE FOR A PRIVATE CAUSE OF ACTION, AND TO PROVIDE LIMITATIONS; PROVIDING SEVERABILITY; PROVIDING APPLICABILITY; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE FINDINGS AND INTENT. The Legislature finds that this state was founded upon the fundamental truth that all men are created equal and endowed with inalienable rights. Among these rights is the freedom of inquiry, which along with the principle of liberal toleration is essential to the advancement and diffusion of knowledge. The constitution of this state also declares that the stability of a republican form of government depends mainly upon the intelligence of the people. In contravention of these principles, a subversive ideology derived from the tenets of critical theory has infected the administration of this state's system of higher education, promoting a culture of division, ignorance, bigotry, and intolerance. Therefore, it is the intent of the Legislature to eliminate all programs and initiatives within all public institutions of higher education predicated on the tenets of critical theory, or more commonly known under the title of "diversity, equity, and inclusion."

SECTION 2. That Chapter 59, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5909D, Idaho Code, and to read as follows:

67-5909D. FREEDOM OF INQUIRY IN HIGHER EDUCATION. (1) For the purpose of this section:

(a) "Bias reporting system" means any office, department, position, or system whose function is to:

(i) Investigate, threaten disciplinary action, or otherwise punish enrolled students for expressions of speech protected by state or federal law, including but not limited to speech pertaining to disagreements of opinion, political beliefs or affiliations, or perceived bias, prejudice, stereotypes, or intolerance; or

(ii) Solicit the reporting of incidents of student speech protected by state or federal law, including but not limited to speech pertaining to disagreements of opinion, political beliefs or affiliations, or perceived bias, prejudice, stereotypes, or intolerance.

(b)(i) "Diversity, equity, and inclusion" or "DEI" means any trainings, programs, activities, or instruction that is derived from or that promotes the tenets or concepts of critical theory, including but not limited to the concepts of unconscious or implicit bias, microaggressions, internalized racism, cultural appropriation, structural equity, settler colonialism, group marginalization, systemic oppression, social justice, institutional or systemic racism, white fragility, racial privilege, disparate impact, intersectionality, sexual privilege, patriarchy, gender theory, queer theory, neopronouns, transgender ideology, misgendering, othering, deadnaming, heteronormativity, allyship, or any other related formulation of these tenets or concepts. This definition shall also include any program, decision-making process, or initiative established for the purpose of:

1. Influencing hiring or employment practices at the institution of higher education with respect to race, color, ethnicity, sex, disability, or religion, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal anti-discrimination laws;

2. Promoting differential treatment of, or providing special benefit to, individuals on the basis of race, color, ethnicity, sex, disability, or religion; or

3. Promoting policies or procedures designed or implemented to provide preferential treatment with respect to race, color, ethnicity, sex, disability, or religion, other than policies or procedures approved in writing by the institution of higher education's legal counsel and the attorney general of the state of Idaho for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

(ii) This excludes trainings, programs, or activities developed by an attorney or person acting under the supervision of a licensed attorney and approved in writing by the institution of higher education's general counsel and the attorney general of the state of Idaho for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

(c)(i) "Diversity, equity, or inclusion office" means any division, office, center, or other unit of an institution of higher education that is responsible for creating, developing, designing, implementing, organizing, planning, or promoting policies, programming, training, practices, activities, services, or procedures relating to diversity, equity, and inclusion.

(ii) "Diversity, equity, and inclusion office" shall not include:

1. An office certified by the attorney general of the state of Idaho as operating with the sole and exclusive mission of ensuring legal compliance with the institution of higher education's obligations under title IX of the education amendments of 1972, the federal Americans with disabilities act, the federal age discrimination in employment act, title VI of the federal civil rights act of 1964, an applicable court order, or other applicable state or federal law;

2. An academic department defined as a unit of an institution of higher education that exists primarily for the purpose of offering courses for degree credit and that does not establish policies or procedures to which other units of the institution of higher education are subject; or

3. A student organization that is registered with the institution of higher education.

(d)(i) "Diversity, equity, and inclusion officer" means an individual whose duties for the institution include coordinating, creating, developing, designing, implementing, organizing, planning, or promoting policies, programming, training, practices, activities, or procedures relating to diversity, equity, and inclusion and who is a full-time or part-time employee of an institution of higher education or subdivision or affiliated entity thereof or an independent contractor of an institution of higher education.

(ii) "Diversity, equity, and inclusion officer" shall not include:

1. Any full-time or part-time employee who is a licensed attorney or acting under the supervision of a licensed attorney and whose sole job duties related to diversity, equity, and inclusion are to ensure compliance with the institution of higher education's obligations under title IX of the education amendments of 1972, the federal Americans with disabilities act, the federal age discrimination in employment act, title VI of the federal civil rights act of 1964, applicable court orders, or other applicable state and federal law;

2. Any faculty member while such faculty member is teaching, engaged in research, engaged in the production of creative works, engaged in the dissemination of research or creative works, or advising a registered student organization; or

3. Guest speakers or performers who do not receive any form of compensation in exchange for their presentation, performance, or appearance.

(e)(i) "Diversity training" means a training, seminar, discussion group, workshop, or other instructional program, whether provided in-person, online, or by any other means, with a purpose of advising, counseling, demonstrating, explaining, instructing, or teaching participants in a way that promotes diversity, equity, and inclusion.

(ii) "Diversity training" shall not include an academic course offered for credit and not otherwise subject to subsection (2)(f) or (g) of this section, counseling that involves a patient-client relationship, or activities of a student organization registered with an institution of higher education as long as the organization and activity do not use state funds.

(iii) "Diversity training" does not limit or prohibit an institution of higher education's authority to establish policies that are necessary to comply with state or federal law, including laws relating to prohibited discrimination or harassment.

(f) "DEI-related course" means a course of instruction taken for credit whose subject matter or pedagogical methodology is derived from or promotes any of the concepts of critical theory or DEI described in this section.

(g) "Institution of higher education" means the following entities that are accredited by the northwest commission on colleges and universities or another accrediting body recognized by the state board of education:

(i) Any public institution of higher education or subdivision or affiliated entity thereof that receives funding appropriated by the Idaho legislature; or

(ii) Any subdivision or affiliated entity of a private university, college, or community college in Idaho that receives funding appropriated by the Idaho legislature directly to the private institution.

(h) "Public institution of higher education" means any public university, public college, public career technical school, or public community college located in the state of Idaho.

(2) Except as otherwise provided in this section, no institution of higher education in the state of Idaho, or any employee, appointee, or committee acting on behalf of an institution of higher education, shall:

(a) Discriminate against or provide preferential treatment to a prospective student on account of such prospective student's race, sex, color, ethnicity, or national origin during the admissions process to determine such prospective student's acceptance into the institution or a program of study;

(b) Discriminate against or provide preferential treatment to a prospective employee on account of such prospective employee's race, sex, color, ethnicity, or national origin during the hiring process;

(c) Establish, sustain, support, or staff a diversity, equity, and inclusion office or department; or contract, employ, engage, or hire an individual to serve as a diversity, equity, and inclusion officer or consultant. Any funds that would otherwise have been expended on diversity, equity, and inclusion offices or diversity, equity, and inclusion officers in fiscal year 2026 may be reallocated, at the discretion of the governing board of the institution of higher education, to merit scholarships designed to reduce tuition for in-state students;

(d) Either directly or indirectly, organize, administer, conduct, promote, or sponsor diversity training;

(e) Establish, sustain, support, or staff any bias reporting system;

(f) Establish curricula or designate courses at the institution in a manner that requires or otherwise compels a student to enroll in a DEI-related course in order to satisfy the requirements of any academic degree program, including general education, major, minor, or certificate requirements, except as provided in subsection (3) of this section; or

(g) Require, solicit, or incentivize faculty to apply or participate in DEI practices or include DEI-related content in any course as a condition of approval, designation, or listing as part of any academic degree program, including general education, major, minor, or certificate requirements, or as a condition of consideration in any faculty member's performance assessment, promotion, tenure, salary adjustment, or any other incentive, except as provided in subsection (3) of this section.

(3) Every institution of higher education in the state of Idaho shall provide a procedure to allow the governing board of the institution of higher education to exempt, upon written request to the board, any academic degree program requirements of any major, minor, certificate, or department the title of which clearly establishes its course of study as primarily focused on racial, ethnic, or gender studies from the prohibitions of subsection (2)(f) and (g) of this section, provided that a student may not be required or otherwise compelled to enroll in any such program, department, or course in order to satisfy the requirements of any other academic degree program, including general education requirements, or any other major, minor, or certificate requirements.

(4)(a) Every public institution of higher education shall, on or before January 15 of each year, submit an annual report to the attorney general and the education committees of both the house of representatives and the senate signed by the president of the institution of higher education certifying that the institution is in compliance with this section.

(b) In 2026, this report shall include a list of:

(i) All offices, programs, and initiatives that have existed within the institution within the preceding two (2) years that would have constituted a violation of the provisions of subsection (2) of this section if this section was in effect at such time, along with the actions taken by the institution to ensure compliance with the provisions of this section;

(ii) Officers, employees, and contractors that have been employed by or contracted with the institution within the preceding two (2) years whose employment would have constituted a violation of this section if this section was in effect at such time, along with the actions taken by the institution to ensure compliance with the provisions of this section; and

(iii) Trainings, activities, or courses of instruction required by the institution within the preceding two (2) years that would have constituted a violation of this section if this section was in effect at such time, along with the actions taken by the institution to ensure compliance with the provisions of this section.

(5) The provisions of this section shall be enforced by the attorney general as follows:

(a) Any person may notify the attorney general of a violation or potential violation of this section by an institution of higher education. The attorney general shall investigate the alleged violation and, if the attorney general determines that an institution of higher education has violated any provision of this section, the attorney general shall send written notice to the institution of higher education with a detailed description of the violation. The attorney general may file suit for a writ of mandamus or any appropriate injunctive relief compelling the institution of higher education to comply with the provisions of this section; and

(b) The attorney general may seek civil penalties for any violations of this section up to ten percent (10%) of the amount of the institution of higher education's operating expenses for the offending division, office, center, or unit within the institution of higher education where the violation occurred for the state fiscal year preceding that in which the violation occurred or fifty thousand dollars ($50,000), whichever is greater.

(6)(a) Any student enrolled in a degree program at an institution of higher education shall have a private cause of action against such an institution of higher education that violates the provisions of subsection (2)(a), (c), (d), (e), or (f) of this section to seek injunctive relief.

(b) Any staff member of an institution of higher education shall have a private cause of action against such an institution of higher education that violates the provisions of subsection (2)(b), (c), (d), (e), or (g) of this section to seek injunctive relief.

(c) Notwithstanding any other provision of law to the contrary, a civil action brought under this subsection shall be brought in the county where a defendant institution of higher education is located and in which all or a substantial part of the actions or omissions giving rise to the claim occurred.

(7) The provisions of this section shall not be construed to:

(a) Limit research by students, faculty, or other research personnel of an institution of higher education or the dissemination of such research;

(b) Limit creative works by students, faculty, or other personnel of an institution of higher education or the dissemination of such creative works;

(c) Limit activities of student organizations registered with an institution of higher education as long as the organization and activity do not use state funds;

(d) Limit the appearance of guest speakers and performers who do not receive any form of compensation in exchange for their presentations, performances, or appearances as long as attendance is voluntary;

(e) Prohibit an institution of higher education from establishing bona fide qualifications based on sex that are reasonably necessary to the normal operation of an institution of higher education;

(f) Limit the academic freedom of any individual faculty member of an institution of higher education to direct the instruction within such

faculty member's own course not otherwise subject to this section or to limit the free discussion of ideas in a classroom setting;

(g) Prohibit any program or training that is generated by licensed attorneys and required for the institution of higher education to comply with its obligation under title IX of the education amendments of 1972, the federal Americans with disabilities act, the federal age discrimination in employment act, title VI of the federal civil rights act of 1964, any applicable court order, or other applicable state and federal law, provided that the institution of higher education makes any materials associated with such program or training publicly available on its website;

(h) Prohibit an institution of higher eduction from regulating student speech or activity that is prohibited by law or from investigating or soliciting information about potentially illegal speech, speech associated with potentially illegal activity, or incidents in which speech rights were potentially curtailed. Except as further limited by this section, institutions shall be allowed to restrict student expression not otherwise protected by section 9, article I of the constitution of the state of Idaho; or

(i) Prohibit an institution of higher education from supporting citizens of federally recognized American Indian tribes by:

(i) Establishing and maintaining designated centers for American Indian students;

(ii) Supporting American Indian cultural events; or

(iii) Offering or facilitating scholarships for American Indian students.

SECTION 3. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 4. APPLICABILITY. No provision of this act shall be construed to apply to any institution of higher education in any manner retroactively before July 1, 2025.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2025.