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Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2392

Introduced by

Senators Wobbema, Hogue, Myrdal, Paulson

Representatives D. Johnston, Steiner

A BILL for an Act to create and enact a new chapter to title 15, a new chapter to title 15.1, a new section to chapter 54-10, and a new chapter to title 54 of the North Dakota Century Code, relating to the regulation of prohibited discriminatory practices; and to provide for a legislative management report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 15 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Board" means the state board of higher education.
2. "Personal identity characteristic" means an individual's race, color, ethnicity, sex, sexual orientation, national origin, religion, or gender identity.
3. a. "Prohibited discriminatory practice" means engaging in or maintaining a policy, procedure, practice, program, office, initiative, or required training that:
   (1) Asserts one personal identity characteristic is inherently superior or inferior to another personal identity characteristic.
   (2) Asserts an individual, by virtue of the individual's personal identity characteristics, is inherently privileged, oppressed, racist, sexist, oppressive, or a victim, whether consciously or unconsciously.
   (3) Asserts an individual should be discriminated against in violation of Title VI, Title VII, and Title IX, receive adverse treatment, be advanced, or receive beneficial treatment because of the individual's personal identity characteristics.

(4) Asserts an individual's moral character is determined by the individual's personal identity characteristics.

(5) Asserts an individual, by virtue of the individual's personal identity characteristics, bears responsibility for actions committed in the past by other individuals with the same personal identity characteristics.

(6) Asserts an individual should feel discomfort, guilt, anguish, or other psychological distress solely because of the individual's personal identity characteristics.

(7) Asserts that meritocracy is inherently racist or sexist.

(8) Asserts that sociopolitical structures are inherently a series of power relationships and struggles among racial groups.

(9) Promotes resentment between, or resentment of, individuals by virtue of their personal identity characteristics.

(10) Ascribes values, morals, or ethical codes, privileges, or beliefs to an individual because of the individual's race, color, ethnicity, sex, sexual orientation, national origin, or gender identity.

(11) Considers an individual's personal identity characteristics in determining receipt of state financial aid or other state financial assistance, including a scholarship award or tuition waiver.

(12) Is referred to or named diversity, equity, and inclusion.

(13) Based on an individual's personal identity characteristics:

(a) Promotes differential treatment of an individual without an important government interest;

(b) Influences employment decisions of an individual other than through the use of neutral hiring processes with regard to personal identity characteristics and in accordance with federal law;

(c) Influences an individual's admission to, advancement in, or graduation from an institution, the public education system, or an academic program; or

(d) Influences an individual's participation in an institution-sponsored or public education system-sponsored program.

b. The term does not include policies or procedures required by state or federal law, including laws relating to prohibited discrimination or harassment.

4. "Prohibited submission" means a submission, statement, or document that requires an individual to articulate the individual's position, view, contribution, effort, or experience regarding a policy, program, or initiative that promotes differential treatment based on an individual's personal identity characteristics.

5. "Prohibited training" means a mandatory instructional program, including an in-person or online seminar, discussion group, workshop, and related materials which an institution requires the institution's employees, prospective employees, students, or prospective students to attend and which promotes prohibited discriminatory practices.

6. "Student success and support" means an office, division, employment position, or other unit of an institution established or maintained to provide support, guidance, and resources that equip all students, including all students at higher risk of not completing a certificate or degree, with experiences and opportunities for success in each student's academic and career goals, and without excluding individuals on the basis of an individual's personal identity characteristics.

7. "Title VI" means Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]

8. "Title VII" means Title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.]

9. "Title IX" means Title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.]

Prohibition on the use of certain submissions in higher education - Exceptions - Report to legislative management.

1. Except as provided in subsections 3 and 5, an institution may not require, request, solicit, or compel a prohibited submission as a certification or condition before taking action with respect to:

a. Employment, including decisions regarding:

(1) Hiring;

(2) Terms of employment;

(3) Benefits;

(4) Compensation;

(5) Seniority status;

(6) Tenure or continuing status;

(7) Promotion;

(8) Performance reviews;

(9) Transfer;

(10) Termination; or

(11) Appointment.

b. Admission to, advancement in, or graduation from an institution or an academic program.

c. Participation in an institution-sponsored program.

d. Qualification for or receipt of state financial aid or other state financial assistance.

2. An institution may not grant a form of preferential consideration to an individual who, with or without solicitation from the institution, provides a prohibited submission for consideration for any action described in subsection 1.

3. If federal law requires an institution to accept or require a prohibited submission, the institution:

a. May accept the prohibited submission only to the extent required under federal law; and

b. Shall limit consideration of the information contained in the prohibited submission to the extent necessary to satisfy the requirement under federal law.

4. For a required prohibited submission under subsection 3, an institution shall:

a. Prepare a report to the board detailing the circumstances under which a prohibited submission is required; and

b. Publish the report on the institution's website in a conspicuous location.

5. This section does not limit or prohibit an institution's authority to establish policies that:

a. Are necessary to comply with state or federal law, including laws relating to prohibited discrimination or harassment;

b. Require disclosure of an employee's academic research, classroom teaching, or coursework; or

c. Require an applicant for employment, tenure, or promotion to disclose or discuss the applicant's:

(1) Research;

(2) Teaching agenda;

(3) Artistic creations; or

(4) Pedagogical approaches or experiences with students of all learning abilities.

6. Beginning on July 1, 2026, the board shall conduct a biennial review of each institution of higher education's compliance with this section. If the board identifies a violation of this section, the board shall:

a. On or before thirty days after the day on which the board identifies the violation, work with the institution to create a remediation plan; and

b. Provide the institution one hundred eighty days after the day of the creation of the remediation plan to cure the violation.

7. On or before November first of each even-numbered year, the board shall prepare and submit a report to the legislative management on:

a. The review process and each institution's compliance determination; or

b. The remediation plan and progress under subsection 6 if a violation is identified.

8. The legislative assembly may withhold future state appropriations to an institution that fails to cure a violation of this section within the time provided under subsection 6.

9. The board shall make rules to establish a procedure for accepting and processing an individual's complaint against an institution for an alleged violation of this section.

Prohibition on the use of certain training in higher education - Exceptions - Report to legislative management.

1. An institution may not require prohibited training.

2. An institution shall train annually the institution's faculty and staff on academic freedom and freedom of speech in accordance with state or federal law.

3. This section does not limit or prohibit an institution's authority to establish policies necessary to comply with state or federal law, including laws relating to prohibited discrimination or harassment.

4. Beginning on July 1, 2026, the board shall conduct a biennial review of each institution's compliance with this section. If the board identifies a violation of this section, the board shall:

a. On or before thirty days after the day on which the board identifies the violation, work with the institution to create a remediation plan; and

b. Provide the institution one hundred eighty days after the day of the creation of the remediation plan to cure the violation.

5. On or before November first of each even-numbered year, the board shall prepare and submit a report to the legislative management on:

a. The review process and each institution's compliance determination; or

b. The remediation plan and progress under subsection 4 if a violation is identified.

6. The legislative assembly may withhold future state appropriations to an institution that fails to cure a violation of this section within the time provided under subsection 4.

7. The board shall make rules to establish a procedure for accepting and processing an individual's complaint against an institution for an alleged violation of this section.

Prohibited discriminatory practices - Restrictions - Exceptions - Report to legislative management.

1. An institution may not:

a. Engage in prohibited discriminatory practices.

b. Take, express, or assert a position or opinion on anti-racism, bias, critical race theory, implicit bias, intersectionality, racial privilege, or a prohibited discriminatory practice.

c. Establish or maintain an office, division, employment position, or other unit of an institution established to implement, develop, plan, or promote campus policies, procedures, practices, programs, or initiatives regarding prohibited discriminatory practices.

d. Employ or assign an employee or a third party whose duties for an institution include coordinating, creating, developing, designing, implementing, organizing, planning, or promoting policies, programming, training, practices, activities, and procedures relating to prohibited discriminatory practices.

2. An institution shall:

a. Ensure that all students have access to programs providing student success and support.

b. Publish the titles and syllabi of all mandatory courses, seminars, classes, workshops, and training sessions on the institution's website in an online database readily searchable by the public.

c. Annually train employees on the separation of personal political advocacy from an institution's business and employment activities.

d. Develop strategies, including inviting speakers, to promote viewpoint diversity.

e. Establish policies and procedures to include opportunities for education and research on free speech and civic education.

3. Beginning on July 1, 2026, the board shall conduct a biennial review of each institution's compliance with this section. If the board identifies a violation of this section, the board shall:

a. On or before thirty days after the day on which the board identifies the violation, work with the institution to create a remediation plan; and

b. Provide the institution one hundred eighty days after the day of the creation of the remediation plan to cure the violation.

4. On or before November first of each even-numbered year, the board shall prepare and submit a report to the legislative management on:

a. The review process and each institution's compliance determination; or

b. The remediation plan and progress under subsection 3 if a violation is identified.

5. The legislative assembly may withhold future state appropriations to an institution that fails to cure a violation of this section within the time provided under subsection 3.

6. The board shall make rules to establish a procedure for accepting and processing an individual's complaint against an institution for an alleged violation of this section.

SECTION 2. A new chapter to title 15.1 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Board" means the board of a school district.

2. "Department" means the department of public instruction.

3. "Personal identity characteristic" means an individual's race, color, ethnicity, sex, sexual orientation, national origin, religion, or gender identity.

4. a. "Prohibited discriminatory practice" means engaging in or maintaining a policy, procedure, practice, program, office, initiative, or required training that:

(1) Asserts one personal identity characteristic is inherently superior or inferior to another personal identity characteristic.

(2) Asserts an individual, by virtue of the individual's personal identity characteristics, is inherently privileged, oppressed, racist, sexist, oppressive, or a victim, whether consciously or unconsciously.

(3) Asserts an individual should be discriminated against in violation of Title VI, Title VII, and Title IX, receive adverse treatment, be advanced, or receive beneficial treatment because of the individual's personal identity characteristics.

(4) Asserts an individual's moral character is determined by the individual's personal identity characteristics.

(5) Asserts an individual, by virtue of the individual's personal identity characteristics, bears responsibility for actions committed in the past by other individuals with the same personal identity characteristics.

(6) Asserts an individual should feel discomfort, guilt, anguish, or other psychological distress solely because of the individual's personal identity characteristics.

(7) Asserts that meritocracy is inherently racist or sexist.

(8) Asserts that sociopolitical structures are inherently a series of power relationships and struggles among racial groups.

(9) Promotes resentment between, or resentment of, individuals by virtue of their personal identity characteristics.

(10) Ascribes values, morals, or ethical codes, privileges, or beliefs to an individual because of the individual's race, color, ethnicity, sex, sexual orientation, national origin, or gender identity.

(11) Considers an individual's personal identity characteristics in determining receipt of state financial aid or other state financial assistance, including a scholarship award or tuition waiver.

(12) Is referred to or named diversity, equity, and inclusion.

(13) Based on an individual's personal identity characteristics:

(a) Promotes differential treatment of an individual without an important government interest;

(b) Influences employment decisions of an individual other than through the use of neutral hiring processes with regard to personal identity characteristics and in accordance with federal law;

(c) Influences an individual's admission to, advancement in, or graduation from an institution, the public education system, or an academic program; or

(d) Influences an individual's participation in an institution-sponsored or public education system-sponsored program.

b. The term does not include policies or procedures required by state or federal law, including laws relating to prohibited discrimination or harassment.

5. "Prohibited submission" means a submission, statement, or document that requires an individual to articulate the individual's position, view, contribution, effort, or experience regarding a policy, program, or initiative that promotes differential treatment based on an individual's personal identity characteristics.

6. "Title VI" means Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]

7. "Title VII" means Title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.]

8. "Title IX" means Title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.]

Prohibited discriminatory practices - Restrictions - Report to legislative management.

1. The department, a school district, or board may not:

a. Engage in prohibited discriminatory practices.

b. Establish or maintain an office, division, or employment position established to implement, develop, plan, or promote policies, procedures, practices, programs, or initiatives regarding prohibited discriminatory practices; or

c. Employ or assign an employee or a third party whose duties for the department, school district, or board include coordinating, creating, developing, designing, implementing, organizing, planning, or promoting policies, programming, training,

practices, activities, and procedures relating to prohibited discriminatory practices.

2. A school district shall ensure that all students have access to programs providing student success and support.

3. This section does not limit or prohibit the department, a school district, or a school board from establishing policies necessary to comply with state or federal law, including laws relating to prohibited discrimination or harassment.

4. If the department identifies a reported violation of this section, the department shall provide an update to the legislative management on a school district's or board's compliance with this section by November first of each even-numbered year.

5. The department shall establish a procedure for accepting and processing an individual's complaint against a board or school district for an alleged violation of this section.

Prohibition on the use of certain submissions in public education - Exceptions - Report to legislative management.

1. Except as provided in subsections 3 and 5, a school district may not require, request, solicit, or compel a prohibited submission as a certification or condition before taking action with respect to:

   a. Employment, including decisions regarding:

      (1) Hiring;

      (2) Terms of employment;

      (3) Benefits;

      (4) Compensation;

      (5) Seniority status;

      (6) Tenure or continuing status;

      (7) Promotion;

      (8) Performance reviews;

      (9) Transfer;

      (10) Termination; or

      (11) Appointment.

   b. Enrollment or graduation from the district.

c. Participation in district-sponsored programs.

d. Qualification for or receipt of state financial aid or other state financial assistance.

2. A school district may not grant any form of preferential consideration to an individual who, with or without solicitation from the district, provides a prohibited submission for consideration for any action described in subsection 1.

3. If federal law requires a school district to accept or require a prohibited submission, the school district:

a. May accept the prohibited submission only to the extent required under federal law; and

b. Shall limit consideration of the information contained in the prohibited submission to the extent necessary to satisfy the requirement under federal law.

4. For a required prohibited submission under subsection 3, a school district shall provide a report to the department detailing the circumstances under which a prohibited submission under subsection 3 is required.

5. This section does not limit or prohibit a school district's authority to establish policies that:

a. Are necessary to comply with state or federal law, including laws relating to prohibited discrimination or harassment; or

b. Require an applicant for employment, tenure, continuing status, or promotion to disclose or discuss the applicant's:

(1) Teaching record;

(2) Artistic creations; or

(3) Pedagogical approaches or experiences with students of all learning abilities.

6. If the department identifies a reported violation of this section, the department shall provide a report to the legislative management on a district's compliance with this section by November first of each even-numbered year.

7. The department shall establish a procedure for accepting and processing an individual's complaint against a school district for an alleged violation of this section.

SECTION 3. A new section to chapter 54-10 of the North Dakota Century Code is created and enacted as follows:

Prohibited discriminatory practice - Violation - Report to legislative management.

The auditor shall report compliance with section 4 of this Act by establishing a process to receive and audit each violation and shall report to the legislative management, upon request, on the findings and recommendations under this section.

SECTION 4. A new chapter to title 54 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Executive agency director" means the director of an executive branch agency who, at the direction of the governor, carries out state business.
2. "Government employer" means a political subdivision or any department, division, agency, commission, board, council, committee, authority, or any other institution of the state. The term does not include school districts or institutions under the control of the state board of higher education.
3. "Personal identity characteristic" means an individual's race, color, ethnicity, sex, sexual orientation, national origin, religion, or gender identity.
4. a. "Prohibited discriminatory practice" means engaging in or maintaining a policy, procedure, practice, program, office, initiative, or required training that:
   (1) Asserts one personal identity characteristic is inherently superior or inferior to another personal identity characteristic.
   (2) Asserts an individual, by virtue of the individual's personal identity characteristics, is inherently privileged, oppressed, racist, sexist, oppressive, or a victim, whether consciously or unconsciously.
   (3) Asserts an individual should be discriminated against in violation of Title VI, Title VII, and Title IX, receive adverse treatment, be advanced, or receive beneficial treatment because of the individual's personal identity characteristics.
   (4) Asserts an individual's moral character is determined by the individual's personal identity characteristics.

(5) Asserts an individual, by virtue of the individual's personal identity characteristics, bears responsibility for actions committed in the past by other individuals with the same personal identity characteristics.

(6) Asserts an individual should feel discomfort, guilt, anguish, or other psychological distress solely because of the individual's personal identity characteristics.

(7) Asserts that meritocracy is inherently racist or sexist.

(8) Asserts that sociopolitical structures are inherently a series of power relationships and struggles among racial groups.

(9) Promotes resentment between, or resentment of, individuals by virtue of their personal identity characteristics.

(10) Ascribes values, morals, or ethical codes, privileges, or beliefs to an individual because of the individual's race, color, ethnicity, sex, sexual orientation, national origin, or gender identity.

(11) Considers an individual's personal identity characteristics in determining receipt of state financial assistance.

(12) Is referred to or named diversity, equity, and inclusion.

(13) Based on an individual's personal identity characteristics:

(a) Promotes differential treatment of an individual without an important government interest;

(b) Influences employment decisions of an individual other than through the use of neutral hiring processes with regard to personal identity characteristics and in accordance with federal law; or

(c) Influences an individual's participation in an institution-sponsored program.

b. The term does not include policies or procedures required by state or federal law, including laws relating to prohibited discrimination or harassment.

5. "Prohibited submission" means a submission, statement, or document that requires an individual to articulate the individual's position, view, contribution, effort, or experience regarding a policy, program, or initiative that promotes differential treatment based on an individual's personal identity characteristics.

a. The term includes a submission, statement, or document that relates to a policy, program, or initiative regarding:

(1) Anti-racism;

(2) Bias;

(3) Critical race theory;

(4) Implicit bias;

(5) Intersectionality;

(6) Prohibited discriminatory practice; or

(7) Racial privilege.

b. The term does not include a submission, statement, or document for an employment position if the submission, statement, or document relates to a bona fide occupational qualification for the position.

6. "Prohibited training" means a mandatory instructional program, including an in-person or online seminar, discussion group, workgroup, and related materials, which a government employer requires the employer's employees or prospective employees, to attend and which promotes prohibited discriminatory practices.

7. "Title VI" means Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]

8. "Title VII" means Title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.]

9. "Title IX" means Title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.]

Prohibition on the use of certain submissions by government employers - Exceptions.

1. Except as provided under subsection 3, a government employer may not require, request, solicit, or compel a prohibited submission as a certification or condition before taking action with respect to:

a. Employment, including decisions regarding:

(1) Hiring;

(2) Terms of employment;

(3) Benefits;

(4) Compensation;

(5) Seniority status;

(6) Tenure or continuing status;

(7) Promotion;

(8) Performance reviews;

(9) Transfer;

(10) Termination; or

(11) Appointment.

b. Admissions and aid, including:

(1) Admission to any state program;

(2) Financial or other forms of state-administered aid or assistance; or

(3) Other benefits from the government employer for which an individual is eligible.

2. A government employer may not grant any form of preferential consideration to an individual who, with or without solicitation from the government employer, provides a prohibited submission for any action described in subsection 1.

3. If federal law requires a government employer to accept or require a prohibited submission, the government employer:

a. May accept the prohibited submission only to the extent required under federal law; and

b. Shall limit consideration of the information contained in the prohibited submission to the extent necessary to satisfy the requirement under federal law.

4. This section does not limit or prohibit a government employer from establishing policies necessary to comply with state or federal law, including laws relating to prohibited discrimination or harassment.

Prohibition on the use of certain training by government employers - Exception.

A government employer may not require prohibited training. This section does not limit or prohibit a government employer's authority to establish policies that are necessary to comply with state or federal law, including laws relating to prohibited discrimination or harassment.

Prohibited discriminatory practices - Restrictions - Reporting.

1. A government employer may not engage in prohibited discriminatory practices including:

a. Establishing or maintaining an office, division, or employment position to implement, develop, plan, or promote practices relating to personal identity characteristics or prohibited discriminatory practices; or

b. Employing or assigning a third party whose duties for a government employer include coordinating, creating, developing, designing, implementing, organizing, planning, or promoting policies, programming, training, practices, activities, and procedures relating to personal identity characteristics.

2. This section does not apply to:

a. A federal grant or program that would otherwise require a government employer to engage in a prohibited discriminatory practice if the grant or program has been reviewed and approved by the government employer's executive director, legislative body, or governing body. A government employer's executive director, legislative body, or governing body shall report the reviewed and approved federal grant or program to the legislative management.

b. Policies that are necessary to comply with state or federal law, including laws relating to prohibited discrimination or harassment.

3. Beginning on July 1, 2025, each executive agency director shall conduct a review of existing agency programs and offices to determine if the program or office is in compliance with this section.

a. On or before August 1, 2026, and on or before August first of each even-numbered year thereafter, each executive agency director shall report on the compliance of agency programs and offices under this section to the governor.

b. On or before September first of each even-numbered year, the governor shall provide the reports under this section to the legislative management.