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HOUSE BILL 1948

By Ragan

AN ACT to amend Tennessee Code Annotated, Title 49, relative to public institutions of higher education.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 7, Part 1, is amended by adding the following as a new section:

(a) As used in this section, "diversity, equity, and inclusion office" means an office, division, or other unit of a public institution of higher education established for the purpose of:

(1) Influencing the hiring or employment practices of a public institution of higher education with respect to race, sex, color, or ethnicity, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal antidiscrimination laws;

(2) Promoting the differential treatment of, or providing special benefits to, individuals on the basis of race, color, or ethnicity;

(3) Promoting policies or procedures regarding race, color, or ethnicity, other than policies or procedures approved in writing by the institution's general counsel for the sole purpose of ensuring compliance with any applicable court order or state or federal law; or

(4) Conducting trainings, programs, or activities regarding race, color, ethnicity, gender identity, or sexual orientation, other than trainings, programs, or activities developed by an attorney and approved in writing by the institution's general counsel for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

(b) The board of trustees of the University of Tennessee, the board of regents, and each state university board shall ensure that each institution governed by the respective board:

(1) Does not, except as required by federal law:

(A) Establish or maintain a diversity, equity, and inclusion office or an office, unit, or administrative subdivision regardless of name or designation that performs in whole or in part the duties or activities of a diversity, equity, and inclusion office as specified in subsection (a);

(B) Hire or assign an employee of the institution or otherwise contract with a third party for the third party to perform the duties of a diversity, equity, and inclusion office;

(C) Compel, require, induce, solicit, or imply any negative direct or indirect consequences for the refusal of a person to provide a diversity, equity, and inclusion statement, or give preferential consideration or treatment to a person based on the person's provision of a diversity, equity, and inclusion statement;

(D) Give preference on the basis of race, sex, color, ethnicity, or national origin to an applicant for employment, to an employee, or to a participant in any function of the institution, except as required to ensure compliance with § 49-7-180; or

(E) Require, as a condition of enrolling in the institution or performing any function of the institution, a person to participate in diversity, equity, and inclusion training, which:

(i) Includes a training, program, or activity regarding race, color, ethnicity, gender identity, or sexual orientation; and

(ii) Does not include a training, program, or activity developed by an attorney and approved in writing by the institution's general counsel for the sole purpose of ensuring compliance with any applicable court order or state or federal law;

(2) Adopts rules, policies, and procedures for appropriately disciplining, including by termination, an employee or contractor of the institution who engages in conduct that violates subdivision (b)(1); and

(3) Adopts rules in accordance with the Uniform Administration Procedures Act, compiled in title 4, chapter 5, that satisfy the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) and the federal regulations implementing Title IX, as amended, that clearly delineate the duties, requirements, actions, and activities of a diversity, equity, and inclusion office, as specified in subsection (a), that the institution's required Title IX personnel are limited in, or prohibited from, performing, in whole or in part.

(c) This section does not limit or prohibit a public institution of higher education or an employee of a public institution of higher education from, for the purpose of applying for a grant or complying with the terms of accreditation by an accrediting agency, submitting to the grantor or accrediting agency a statement that:

(1) Highlights the institution's work in supporting:

(A) First-generation college students;

(B) Low-income students; or

(C) Underserved student populations; or

(2) Certifies compliance with state and federal antidiscrimination laws.

(d) Subdivision (b)(1) does not apply to:

(1) Academic course instruction;

(2) Scholarly research or the creative work of an institution's students, faculty, or other research personnel, or the dissemination of that research or work;

(3) The activities of a student organization registered with, or recognized by, the institution;

(4) Guest speakers or performers on short-term engagements;

(5) A policy, practice, procedure, program, or activity designed to enhance student academic achievement or postgraduate outcomes that is implemented without regard to race, sex, color, or ethnicity;

(6) Data collection; or

(7) Student recruitment or admissions.

(e) Beginning July 1, 2025, a public institution of higher education shall not expend, in a fiscal year, any funds appropriated by the general assembly to the institution for the respective fiscal year until the governing board of the institution submits to the general assembly a report certifying the board's compliance with this section during the immediately preceding fiscal year.

(f) A governing board of each public institution of higher education shall submit a report to the education committee of the senate and the education administration committee of the house of representatives regarding the board's compliance with this section.

(g) The comptroller of the treasury shall periodically conduct a compliance audit of each public institution of higher education to determine whether the institution has expended funds in violation of subsection (e). The comptroller shall adopt a schedule by which the comptroller of the treasury conducts compliance audits under this subsection

(g). The schedule must ensure that each institution is audited for purposes of this subsection (g) at least once every four (4) years.

(h) If the comptroller of the treasury determines pursuant to a compliance audit conducted pursuant to subsection (g) that a public institution of higher education has expended funds in violation of subsection (e), then the institution must cure the violation no later than the one hundred eighty (180) days after the date on which the determination is made. If the institution fails to timely cure the violation, then the institution is ineligible to receive formula funding increases, institutional enhancements, or exceptional items during the fiscal year immediately following the fiscal year in which the determination is made.

(i) A student or employee of a public institution of higher education who is required to participate in training in violation of subdivision (b)(1)(E) may bring an action against the institution for injunctive or declaratory relief.

(j) The Tennessee higher education commission, in coordination with each public institution of higher education, shall annually conduct a study to identify how implementation of this section has affected the application rate, acceptance rate, matriculation rate, retention rate, grade point average, and graduation rate of students at public institutions of higher education, disaggregated by race, sex, ethnicity, institution, and campus. The commission shall report the results of each annual study to the general assembly, including any legislative recommendations, no later than December 1 of each year. This subsection (j) is repealed on September 1, 2029.

SECTION 2. This act takes effect July 1, 2024, the public welfare requiring it, and applies to the 2024-2025 academic year and each academic year thereafter.