S-3511.1

SENATE BILL 5877

State of Washington 67th Legislature 2022 Regular Session

By Senator Conway

AN ACT Relating to antidiscrimination policies in institutions of higher education; amending RCW 28B.92.030; and adding a new section to chapter 28B.92 RCW.

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

Sec. 1. RCW 28B.92.030 and 2019 c 406 s 21 are each amended to read as follows:

As used in this chapter:

(1) "Council" means the student achievement council.

(2)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable;

(ii) Exists as a record or history; or

(iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits a person's ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(c) For purposes of this definition, "impairment" includes, but is not limited to:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder including, but not limited to, cognitive limitations, organic brain syndromes, emotional or mental illnesses, and specific learning disabilities.

(d) Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

(e) For purposes of (d) of this subsection, a limitation is not substantial if it has only a trivial effect.

(3) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or assisting hearing impaired persons.

(4) "Employer" includes any person acting in the interest of an employer, directly or indirectly.

(5) "Financial aid" means either loans, grants, or both, to students who demonstrate financial need enrolled or accepted for enrollment as a student at institutions of higher education.

((~~(3)~~)) (6) "Financial need" means a demonstrated financial inability to bear the total cost of education as directed in rule by the office.

((~~(4)~~)) (7) "Institution" or "institutions of higher education" means:

(a) Any public university, college, community college, or technical college operated by the state of Washington or any political subdivision thereof; or

(b) Any other university, college, school, or institute in the state of Washington offering instruction beyond the high school level that is a member institution of an accrediting association recognized by rule of the council for the purposes of this section and that agrees to and complies with program rules adopted pursuant to RCW 28B.92.150 and section 2 of this act. However, any institution, branch, extension or facility operating within the state of Washington that is affiliated with an institution operating in another state must be:

(i) A separately accredited member institution of any such accrediting association;

(ii) A branch of a member institution of an accrediting association recognized by rule of the council for purposes of this section, that is eligible for federal student financial aid assistance and has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington, and has an annual enrollment of at least seven hundred full-time equivalent students;

(iii) A nonprofit institution recognized by the state of Washington as provided in RCW 28B.77.240; or

(iv) An approved apprenticeship program under chapter 49.04 RCW.

((~~(5)~~)) (8) "Marital status" means the legal status of being married, single, separated, divorced, or widowed.

(9) "Maximum Washington college grant":

(a) For students attending two or four-year institutions of higher education as defined in RCW 28B.10.016, is tuition and estimated fees for ((~~fifteen~~)) 15 quarter credit hours or the equivalent, as determined by the office, including operating fees, building fees, and services and activities fees.

(b) For students attending private four-year not-for-profit institutions of higher education in Washington, ((~~in the 2019-20 academic year, is nine thousand seven hundred thirty-nine dollars and may increase each year afterwards by no more than the tuition growth factor~~)) is the lesser of the maximum college grant under (a) of this subsection, or the individual institution's tuition for 15 quarter credit hours or the equivalent.

(c) For students attending two-year private not-for-profit institutions of higher education in Washington, in the 2019-20 academic year, is ((~~three thousand six hundred ninety-four dollars~~))

$3,694 and may increase each year afterwards by no more than the tuition growth factor.

(d) For students attending four-year private for-profit institutions of higher education in Washington, in the 2019-20 academic year, is ((~~eight thousand five hundred seventeen dollars~~)) $8,517 and may increase each year afterwards by no more than the tuition growth factor.

(e) For students attending two-year private for-profit institutions of higher education in Washington, in the 2019-20 academic year, is ((~~two thousand eight hundred twenty-three dollars~~)) $2,823 and may increase each year afterwards by no more than the tuition growth factor.

(f) For students attending Western Governors University-Washington, as established in RCW 28B.77.240, in the 2019-20 academic year, is ((~~five thousand six hundred nineteen dollars~~)) $5,619 and may increase each year afterwards by no more than the tuition growth factor.

(g) For students attending approved apprenticeship programs, is tuition and fees, as determined by the office, in addition to required program supplies and equipment.

((~~(6)~~)) (h) Maximum grants for students attending institutions in (a) through (g) of this subsection, whose institution has opted out of the requirements in section 2(1)(b) of this act shall be 85 percent of the maximum college grant award provided for the applicable institution.

(10) "National origin" includes "ancestry."

(11) "Office" means the office of student financial assistance.

((~~(7)~~)) (12) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees, and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof.

(13) "Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists.

(14) "Service animal" means any dog or miniature horse, as discussed in RCW 49.60.214, that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed by the service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks.

(15) "Sex" means gender.

(16) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

(17) "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 fourteen years as the wage is determined by the federal bureau of labor statistics.

NEW SECTION. **Sec. 2.** A new section is added to chapter 28B.92 RCW to read as follows:

(1) Every four years, institutions of higher education participating in the Washington college grant program must either:

(a) Affirmatively opt out of compliance with (b) of this subsection; or

(b) Sign an affidavit affirming that the institution's policies and practices are in compliance with the following provisions:

(i) The institution prohibits discrimination on the basis of race, creed, color, national origin, citizenship or immigration status, sex, 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;

(ii) The institution operates its education program or activity in a manner free of discrimination. No student shall be excluded from participation in an education program or activity, denied the benefits of an education program or activity, or subjected to discrimination on the basis of that student's age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, veteran or military status, 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, unless based upon a bona fide qualification of the educational program;

(iii) The institution, acting in its capacity as an employer, must not:

(A) Refuse to hire, promote, or confer tenure to any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, veteran or military status, 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, unless based upon a bona fide occupational qualification. However, the prohibition against discrimination because of a disability in this subsection does not apply if the particular disability prevents the proper performance of the particular work involved. This subsection shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation;

(B) Discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, veteran or military status, 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;

(C) Discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital

status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, veteran or military status, 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. However, this section does not prohibit an employer from segregating washrooms or locker facilities on the basis of sex, or basing other terms and conditions of employment on the sex of employees where the Washington state human rights commission, created under chapter 49.60 RCW, has by regulation or ruling in a particular instance found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes;

(D) Print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, veteran or military status, 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, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification. However, nothing in this subsection prohibits advertising in a foreign language.

(2) Participation in theology academic programs; and employment, promotion, or tenure of faculty members for courses of study in theology are exempt from the requirements under this section.

(3) Institutions of higher education that take no action regarding the signing of the affidavit shall be determined to have opted out of compliance with subsection (1)(b) of this section. Institutions of higher education that opt out of compliance with subsection (1)(b) of this section are still eligible to participate in the Washington college grant program if they maintain compliance with all other requirements for participation in the program as determined by the office. Institutions that opt out of compliance with subsection (1)(b) of this section are eligible for maximum grants as defined in RCW 28B.92.030(9)(h).

(4) Institutions of higher education that have signed the affidavit under subsection (1)(b) of this section but are determined to have engaged in an unfair practice as provided under this section,

are eligible for maximum grants as defined in RCW 28B.92.030(9)(h) for a period of four years from the beginning of the academic year immediately following the date of the decision.

(5) It is an unfair practice if an institution of higher education which has signed an affidavit agreeing to comply with the requirements under subsection (1)(b) of this section then engages in the discriminatory practices prohibited under subsection (1)(b) of this section. The attorney general may bring an action in the name of the state, against any institution of higher education, to restrain and prevent the doing of any act or practice prohibited by this section.

(6) The attorney general shall investigate complaints and enforce this section, including by conference and conciliation. In addition to the complaint process with the attorney general, any person believed to be injured by a violation of this section 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.

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