

HOUSE BILL REPORT

HB 1522

As Reported by House Committee On:
Postsecondary Education & Workforce
Appropriations

Title: An act relating to addressing sexual misconduct at scholarly or professional associations.

Brief Description: Addressing sexual misconduct at scholarly or professional associations.

Sponsors: Representatives Pollet, Leavitt, Berry and Macri.

Brief History:

Committee Activity:

Postsecondary Education & Workforce: 1/31/23, 2/14/23 [DPS];
Appropriations: 2/23/23, 2/24/23 [DP2S(w/o sub PEW)].

Brief Summary of Second Substitute Bill

- Requires institutions to ask and require applicants to sign statements regarding substantiated findings of sexual misconduct at scholarly or professional associations before an official offer of employment.
- Requires institutions to request in writing that relevant scholarly or professional associations disclose information about substantiated findings of sexual misconduct declared by the applicant before an official offer of employment.

HOUSE COMMITTEE ON POSTSECONDARY EDUCATION & WORKFORCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Slatter, Chair; Entenman, Vice Chair; Reed, Vice Chair; Waters, Assistant Ranking Minority Member; Hansen, Jacobsen, Klicker, Leavitt, McEntire, Paul, Pollet, Schmidt and Timmons.

Minority Report: Without recommendation. Signed by 2 members: Representatives

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Ybarra, Ranking Minority Member; Chandler.

Staff: Elizabeth Allison (786-7129).

Background:

In 2020 the Legislature enacted a series of requirements relating to sexual misconduct allegations and investigations that must be followed by institutions of higher education during the hiring process.

Before an official offer of employment, a postsecondary educational institution (institution) must request an applicant to sign a statement with three items:

1. a declaration of whether the applicant is the subject of any substantiated findings of sexual misconduct in any current or former employment or is currently being investigated for, or left a position during an investigation into, a violation of sexual misconduct, and if so, an explanation of the situation;
2. an authorization to permit the applicant's current and past employers to disclose to the hiring institution any sexual misconduct committed by the applicant and to make copies of all documents in the previous employer's personnel, investigative, or other files relating to sexual misconduct by the applicant available to the hiring institution; and
3. a release from liability for the applicant's current and past employers, and employees acting on behalf of the employer, for providing the information in items 1 and 2.

Additionally, before an official offer of employment, the institution must request that the applicant's current and past employers provide copies of all documents, if any, related to sexual misconduct in an employee's personnel file. The request must include a copy of the applicant's declaration and signed statement. The institution must also ask the applicant if he or she is the subject of any substantiated findings of, is currently being investigated for, or has left a position during an investigation into, sexual misconduct, and if so, an explanation of the situation. The institution may only use the information received for the purpose of evaluating the applicant's qualifications for the position for which the person applied.

An institution that receives a request to disclose information about substantiated findings or investigations into sexual misconduct about a current or previous employee must provide the information requested and make copies of documents related to substantiated sexual misconduct in the applicant's personnel file available to the requesting institution. In addition, an institution must disclose information about substantiated findings of sexual misconduct to any employer conducting reference or background checks on a current or former employee, even if the employer conducting the reference check does not specifically ask for such information.

An institution may not hire an applicant who does not sign the statement attesting to any

sexual misconduct findings or investigations.

Institutions, or an employee acting on behalf of the institution, who disclose information are presumed to be acting in good faith and are immune from civil and criminal liability for disclosure. The institution is not liable for nondisclosure of information by an employee without access to personnel records who is asked to respond to a reference check.

Institutions must share best practices with all staff who are likely to receive reference checks about how to inform requesters to contact the appropriate office for personnel records. Institutions must keep personal identifying information of the complainant and any witness confidential, unless the complainant or witness agree to disclose their identifying information. The disclosure requirements do not restrict expungement from a personnel file or employment records of information about alleged sexual misconduct that has not been substantiated.

Summary of Substitute Bill:

The statement that must be signed by an applicant prior to an offer of employment must include the following:

1. a declaration of whether the applicant is the subject of any substantiated findings of sexual misconduct by any association with which the applicant has, or has had, a professional relationship;
2. an authorization to permit the applicant's past relevant association to disclose any sexual misconduct committed by the applicant; and
3. a release from liability for the applicant's current or past relevant association for providing the information in items 1 and 2.

Additionally, prior to an offer of employment, an institution must request in writing that the applicant's current and past relevant associations provide the information described in the list above.

Association means a scholarly or professional organization or learned society that sponsors activities or events for the benefit of individuals affiliated with postsecondary education institutions, with a code of conduct forbidding sexual misconduct at such activities or events, and established investigative procedures for allegations that the code of conduct has been violated.

"Investigation" and "substantiated findings" are defined.

Substitute Bill Compared to Original Bill:

The substitute bill specifies that an applicant's declaration regarding substantiated findings

of sexual misconduct by any association means an association with which the applicant has, or has had, a professional relationship. Requirements relating to ongoing investigations of sexual misconduct by an association are removed. "Investigation" and "substantiated findings" are defined.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) In 2020 the Legislature passed the first legislation in the United States addressing the documented problem of "passing the harasser." This refers to an administrator or faculty member found to have committed sexual misconduct being able to quietly walk off the campus with a non-disclosure agreement and then be hired by another institution, which led to the second institution having no knowledge of the offense. The prevalence of repeating sexual assault offenses is high. Surveys have found that approximately 50 percent of all women students have suffered from some form of sexual harassment, as well as over 50 percent of graduate students and a significant portion of LGBTQ students. Many times this happens at an association meeting, which is not currently addressed in law. This bill covers this problem. There needs to be a mechanism to say that institutions will not hire an applicant until the applicant is asked if they have committed sexual misconduct, not just at a prior employer location, but at a conference. If an association does not have an investigative process, the association cannot be asked to provide investigative results, which is why the bill only applies to associations with established investigative procedures. There does need to be some work to provide assurance that due process under Title IX is followed.

Sexual harassment is unacceptable in any venue. Everyone deserves to be safe at institutions as well as the conferences they travel to to support the institutions. The bill formally recognizes something that has been an open secret. Sexual harassment happens all too often outside of formal university events, often in meetings held by associations. This bill sends a clear signal that Washington stands firmly against any sexual harassment. This expansion to the "pass the harasser" law has generated considerable interest across the country. Washington once again has the opportunity to be a national leader and inspire other states.

Associations are waking up to the notion that they have a problem. Only in the last few years are associations starting to have codes of conduct and investigative procedures. Several associations have codes of conduct prohibiting sexual harassment, but not all follow

up with investigative procedures. The focus of this bill is to ensure that findings from associations have the same standing as those of a previous employer.

Sexual misconduct is not an anomaly on college campuses. It is the norm. The Rape, Abuse, and Incest National Network reports that college women between the ages of 18 and 24 are at an elevated risk, but it can happen to any student on campus. Sexual misconduct should be reported and condemned whether it happened on or off campus, especially if it involves relationships involving a student and staff member, as that is an issue of power. Students need support and perpetrators should be held accountable. Professors found guilty of sexual misconduct off campus are still allowed to teach at universities. Students express concern about learning in this environment. Such professors can walk away and work at other institutions.

(Opposed) Sexual misconduct is a widespread societal problem. When there are findings of sexual misconduct they need to be dealt with appropriately. There is concern with associations conducting the investigations. They do not have the same resources in terms of staff, expertise, experience, or time as employers. There is no stipulation in the bill that requires representation for both the person being accused and the person making the allegations. It is important that both parties have representation.

Persons Testifying: (In support) Representative Gerry Pollet, prime sponsor; Amanda Kost, Jacob Vigdor, and Joe Dacca, University of Washington; Bidisha Biswas, Western Washington University; Naira Gonzales Aranda and Sargun Handa, Associated Students of Western Washington University; and Adán Mendoza-Sandoval, Associated Students of Central Washington University.

(Opposed) Simone Boe, Washington Education Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Postsecondary Education & Workforce. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chandler, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

Staff: Kate Henry (786-7349).

Summary of Recommendation of Committee On Appropriations Compared to

Recommendation of Committee On Postsecondary Education & Workforce:

As compared to the substitute bill, the second substitute bill:

- requires institutions to request documentation of any findings of sexual misconduct only when an applicant declares that such a finding exists; and
- removes the legislative intent to expand the requirement to request documentation on sexual misconduct investigations to include those generated by scholarly associations.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington leads the nation in addressing sexual misconduct on higher education institution campuses. Individuals were moving from institution of higher education to institution to evade discipline for sexual misconduct. Data suggest that half of the sexual misconduct against graduate students and faculty occur at associations and conferences. An amendment will tighten the bill to address only when a substantiated finding has been found.

This bill holds perpetrators accountable. By addressing loopholes in the current statute, the bill is a part of supporting victims. Sexual misconduct has detrimental long-term impacts. Students need to feel safe and supported. This bill also addresses workplace safety, as faculty and staff may also be victims of sexual misconduct. This bill only applies to new employee hires.

This bill continues to expand current law to include conferences and other off-campus sites. With an amendment, the fiscal impact should decrease to be able to be accomplished within existing resources. Students across the state have continued to push this policy forward, in the right direction.

(Opposed) None.

Persons Testifying: Representative Gerry Pollet, prime sponsor; Sargun Handa and Naira Gonzales Aranda, Associated Students of Western Washington University; Jacob Vigdor, University of Washington Council of Faculty; and Ruben Flores, Council Of Presidents.

Persons Signed In To Testify But Not Testifying: None.