

SENATE BILL No. 543

By Committee on Ways and Means

3-11

1 AN ACT concerning state educational institutions; relating to diversity,
2 equity and inclusion; prohibiting the endorsement of discriminatory
3 ideologies, the usage of diversity, equity and inclusion statements and
4 the provision of preferential consideration on the basis of such
5 discriminatory ideologies; creating a right of action and providing
6 penalties for violations thereof.

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8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. The purpose of sections 1 through 5, and amendments
10 thereto, is to prohibit certain ideological oaths that undermine academic
11 freedom and open inquiry and impede the discovery, preservation and
12 transmission of knowledge at state educational institutions.

13 Sec. 2. As used in sections 1 through 5, and amendments thereto:

14 (a) "Applicant" means a person who applies to a state educational
15 institution for admission, employment or as a potential contractor.

16 (b) "Contractor" means a person engaged by a state educational
17 institution for the purpose of providing goods or services to such state
18 educational institution but who is not an employee of such state
19 educational institution.

20 (c) "Discriminatory ideology" means an ideology that promotes the
21 differential treatment of any individual or group of individuals based on
22 immutable characteristics of race, color, ethnicity or national origin.

23 (d) "Diversity, equity and inclusion statement" means a written or
24 oral communication relating to an individual's:

25 (1) Race, color, ethnicity or national origin, except to record
26 necessary demographic information of such individual;

27 (2) views on, experience with or past or planned contributions to
28 efforts involving:

29 (A) Diversity, equity and inclusion;

30 (B) marginalized groups;

31 (C) anti-racism;

32 (D) social justice;

33 (E) intersectionality; or

34 (F) any related concept; or

35 (3) views on or experiences with race, color, ethnicity, national origin
36 or other immutable characteristics of students and coworkers.

1 (e) "Employee" means an individual employed by a state educational
2 institution.

3 (f) "Individual" means a natural person.

4 (g) "Institutional review board" means an administrative body
5 established in compliance with federal law and regulations to protect the
6 rights and welfare of human research subjects recruited to participate in
7 research activities conducted under the auspices of the state educational
8 institution with which such institutional review board is affiliated.

9 (h) "Person" means an individual, corporation, partnership, limited
10 liability company, business trust, trust, association, organization, protected
11 series or registered series of a domestic limited liability company or other
12 legal entity.

13 (i) "Preferential consideration" means any act that positively impacts
14 a person's admission to, employment with, engagement as a contractor by
15 or promotion within a state educational institution, including, but not
16 limited to:

17 (1) Applications for admissions, aid, assistance and benefits for
18 which such person is eligible; and

19 (2) employment terms, benefits, seniority status, promotion, transfer
20 and appointments for which such person is eligible.

21 (j) "State educational institution" means the same defined in K.S.A.
22 76-711, and amendments thereto.

23 (k) "Student" means an individual enrolled as a student at a state
24 educational institution.

25 Sec. 3. (a) No state educational institution or institutional review
26 board shall:

27 (1) Compel, require, induce or solicit any applicant, employee,
28 student or contractor to endorse any discriminatory ideology;

29 (2) compel, require, induce or solicit any applicant, employee, student
30 or contractor to provide a diversity, equity and inclusion statement; or

31 (3) provide preferential consideration to any applicant, employee,
32 student or contractor on the basis of such applicant, employee, student or
33 contractor supplying an unsolicited statement based on a discriminatory
34 ideology.

35 (b) Nothing in this section shall be construed to:

36 (1) Restrict academic research or coursework;

37 (2) prevent a state educational institution from requiring applicants
38 to:

39 (A) Disclose or discuss the content of such applicant's research or
40 artistic creations;

41 (B) certify compliance with state and federal anti-discrimination
42 laws;

43 (C) discuss pedagogical approaches or experience with students with

1 learning disabilities; or

2 (3) prevent an applicant or candidate from providing on such
3 applicant's or candidate's own initiative and pursuant to no specific
4 requirement or request from a state educational institution any of the
5 information described in this section.

6 (c) Each state educational institution's general counsel shall transmit
7 annually a written report on compliance with the provisions of this section
8 to the speaker of the house of representatives and the president of the
9 senate.

10 Sec. 4. (a) An applicant, employee, student or contractor who was
11 compelled, required, induced or solicited to endorse a discriminatory
12 ideology or to provide a diversity, equity and inclusion statement or who
13 was adversely affected by a state educational institution's preferential
14 consideration of another person for such person's unsolicited statement
15 based on a discriminatory ideology in violation of the provisions of section
16 3, and amendments thereto, may pursue an action for injunctive or
17 declaratory relief against the state educational institution that is in
18 violation of the provisions of section 3, and amendments thereto.

19 (b) An injunction issued by the court under this section in favor of an
20 applicant, employee, student or contractor against a state educational
21 institution because of a violation of section 3, and amendments thereto,
22 may include an order requiring the state educational institution to:

23 (1) Admit the applicant for enrollment as a student;

24 (2) re-enroll a student who was suspended or expelled;

25 (3) hire a person for the position for which the person's employment
26 application was rejected;

27 (4) rehire in the same or equal position an employee who was
28 dispossessed of such employee's job;

29 (5) promote an employee who was denied a promotion; or

30 (6) provide tenure to an employee who was denied tenure.

31 (c) A state educational institution shall not assert any sovereign or
32 governmental immunity against any action brought pursuant to this
33 section, and such action may be brought against a state educational
34 institution as provided by K.S.A. 76-713, and amendments thereto.

35 (d) Notwithstanding the provisions of the Kansas administrative
36 procedure act, the Kansas judicial review act or any other statute to the
37 contrary, a person may commence an action pursuant to this section and
38 relief may be granted regardless of whether the person sought or exhausted
39 available administrative or legal remedies.

40 (e) The prevailing party in an action brought pursuant to this section
41 may be awarded reasonable attorney fees and costs.

42 Sec. 5. (a) Any employee, whether tenured, employed at will or
43 working pursuant to a contract, who is found to have compelled, required,

1 induced or solicited an applicant, employee, student or contractor to
2 endorse a discriminatory ideology or provide a diversity, equity and
3 inclusion statement or who provided preferential consideration to an
4 applicant, employee, student or contractor on the basis of such person
5 supplying an unsolicited statement based on a discriminatory ideology
6 shall be disciplined by such employee's employer.

7 (b) Upon a first finding that the employee has engaged in conduct
8 prohibited by section 3, and amendments thereto, such employee shall be
9 placed on unpaid leave for the next academic year and ineligible for
10 employment at any other state educational institution during the period of
11 such unpaid leave.

12 (c) Upon a second or subsequent finding that the employee has
13 engaged in conduct prohibited by section 3, and amendments thereto, such
14 employee shall be terminated from employment and ineligible for
15 employment at any state educational institution for not less than five years
16 after the date of the second or subsequent finding.

17 Sec. 6. This act shall take effect and be in force from and after its
18 publication in the statute book.