

State of Wisconsin



2021 Senate Bill 409

Date of enactment:
Date of publication*:

2021 WISCONSIN ACT

AN ACT to create 36.42, 38.21 and 38.28 (2) (dm) of the statutes; relating to: anti-racism and anti-sexism student instruction and anti-racism and anti-sexism training for employees at the University of Wisconsin System and the Technical College System.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 36.42 of the statutes is created to read:

36.42 Race and sex stereotyping. (1) INSTRUCTION.

The board shall prohibit institutions from allowing an instructor to compel students to affirm, adopt, or adhere to any of the following tenets in their personal capacities as individuals:

- (a) One race or sex is inherently superior to another race or sex.
- (b) An individual, by virtue of the individual's race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
- (c) An individual should be discriminated against or receive adverse treatment because of the individual's race or sex.
- (d) Individuals of one race or sex are not able to and should not attempt to treat others without respect to race or sex.
- (e) An individual's moral character is necessarily determined by the individual's race or sex.
- (f) An individual, by virtue of the individual's race or sex, bears responsibility for acts committed in the past by other individuals of the same race or sex.

(g) An individual should feel discomfort, guilt, anguish, or any other form of psychological distress because of the individual's race or sex.

(h) Systems based on meritocracy or traits such as a hard work ethic are necessarily racist or sexist or are created by individuals of a particular race to oppress individuals of another race.

(1d) STUDENT ORIENTATION AND TRAINING. The board shall prohibit institutions from requiring students to attend or participate in a noncredit-earning orientation or training in which the institution adopts the tenets set forth in sub. (1) (a) to (h).

(1g) ACADEMIC FREEDOM. Notwithstanding subs. (1) and (2), nothing in this section, and no board policy, institution policy, or institution employee, shall limit the expressive rights and academic freedom of an instructor of an institution to do any of the following:

- (a) Conduct research, publish, lecture, or teach in the academic setting.
- (b) Require students to participate in instructional exercises with legitimate pedagogical purposes that involve exploring, or arguing for or against, the tenets set forth in sub. (1) (a) to (h).

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(c) Speak publicly as a private citizen on matters of public concern.

(1m) SYLLABUSES POSTED. All course syllabuses shall be posted on the institution's website during the open enrollment period.

(2) EMPLOYEE TRAINING. The board shall not require system employees to attend training in which the board or a contractor hired by the board teaches, advocates, acts upon, or promotes race or sex stereotyping, including any of the concepts described in sub. (1) (a) to (h).

(3) VIOLATION. (a) In this subsection, "complainant" means a system employee or a student enrolled at an institution.

(b) If the board determines that an institution has violated sub. (1), (1d), (1g), (1m), or (2), the board shall notify the institution's chancellor of the violation.

(c) If, 20 business days after sending a notification under par. (b) to an institution's chancellor, the board determines that the institution has not remedied the violation that is the subject of the notification, the board shall withhold from the violating institution in the next fiscal year 5 percent of the amount appropriated under s. 20.285 (1) (a) that the board would have allocated to the institution.

(d) If the board by its authority under par. (c) has withheld state aid from an institution, and the board determines that the institution is complying with subs. (1), (1d), (1g), (1m), and (2), the board shall release the withheld funds to the institution.

(e) A complainant may file a complaint of an alleged violation of sub. (1), (1d), (1g), or (2) with the board.

(f) Notwithstanding the immunity set forth under s. 893.80 (4), a complainant may file a complaint for declaratory or injunctive relief against the board in a court of competent jurisdiction regarding a violation of sub. (1), (1d), (1g), or (2), and if successful in such an action, the court shall issue appropriate injunctive relief and award the complainant damages, court costs, and attorney fees, notwithstanding s. 814.04 (1).

SECTION 2. 38.21 of the statutes is created to read:

38.21 Race and sex stereotyping. (1) INSTRUCTION. District boards shall not allow instructors to compel students to affirm, adopt, or adhere to any of the following tenets in their personal capacities as individuals:

(a) One race or sex is inherently superior to another race or sex.

(b) An individual, by virtue of the individual's race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.

(c) An individual should be discriminated against or receive adverse treatment because of the individual's race or sex.

(d) Individuals of one race or sex are not able to and should not attempt to treat others without respect to race or sex.

(e) An individual's moral character is necessarily determined by the individual's race or sex.

(f) An individual, by virtue of the individual's race or sex, bears responsibility for acts committed in the past by other individuals of the same race or sex.

(g) An individual should feel discomfort, guilt, anguish, or any other form of psychological distress because of the individual's race or sex.

(h) Systems based on meritocracy or traits such as a hard work ethic are necessarily racist or sexist or are created by individuals of a particular race to oppress individuals of another race.

(1d) STUDENT ORIENTATION AND TRAINING. District boards shall not require students to attend or participate in a noncredit-earning orientation or training in which the district board adopts the tenets set forth in sub. (1) (a) to (h).

(1g) ACADEMIC FREEDOM. Notwithstanding subs. (1) and (2), nothing in this section, and no board policy, district board policy, or district board employee, shall limit the expressive rights and academic freedom of an instructor of a technical college to do any of the following:

(a) Conduct research, publish, lecture, or teach in the academic setting.

(b) Require students to participate in instructional exercises with legitimate pedagogical purposes that involve exploring, or arguing for or against, the tenets set forth in sub. (1) (a) to (h).

(c) Speak publicly as a private citizen on matters of public concern.

(1m) SYLLABUSES POSTED. All course syllabuses, during the open enrollment period, shall be posted on the website of the technical college providing the course.

(2) EMPLOYEE TRAINING. No district board shall require employees to attend training in which the district board or a contractor hired by the district board teaches, advocates, acts upon, or promotes race or sex stereotyping, including any of the concepts described in sub. (1) (a) to (h).

(3) VIOLATION. (a) In this subsection, "complainant" means a district board employee or a student enrolled in a technical college.

(b) If the board determines that a district board has violated sub. (1), (1d), (1g), (1m), or (2), the board shall notify the district board of the violation.

(c) If, 20 business days after sending a notification under par. (b) to a district board, the board determines that the district board has not remedied the violation that is the subject of the notification, the board shall withhold from the violating district board in the next fiscal year 5 percent of the amount appropriated under s. 20.292 (1) (d) that the board would have allocated to the district board.

(d) If the board by its authority under par. (c) has withheld state aid from a district board, and the board determines that the district board is complying with subs.

(1), (1d), (1g), (1m), and (2), the board shall release the withheld funds to the district board.

(e) A complainant may file a complaint of an alleged violation of sub. (1), (1d), (1g), or (2) with the board.

(f) Notwithstanding the immunity set forth under s. 893.80 (4), a complainant may file a complaint for declaratory or injunctive relief against a district board in a court of competent jurisdiction regarding a violation of sub. (1), (1d), (1g), or (2), and if successful in such an

action, the court shall issue appropriate injunctive relief and award the complainant damages, court costs, and attorney fees, notwithstanding s. 814.04 (1).

SECTION 3. 38.28 (2) (dm) of the statutes is created to read:

38.28 (2) (dm) Notwithstanding pars. (b), (be), (bm), and (d), the board shall withhold and release payment of state aid to a district board as provided in s. 38.21 (3).
