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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**Contact:** Dan Schmidt, Deputy Director

**2021 Senate Bill 409**

**Senate Amendment 1**

### 2021 SENATE BILL 409

#### Prohibited Activity

Senate Bill 409 prohibits the Board of Regents (the Board) of the University of Wisconsin System (UWS) and district boards of the Wisconsin Technical College System (WTCS) from allowing instructors to teach race or sex stereotyping in any course or as part of any curriculum. Under the bill, race or sex stereotyping includes the following concepts:

- One race or sex is superior to another race or sex.
- An individual, by virtue of the individual's race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
- An individual should be discriminated against or receive adverse treatment because of the individual's race or sex.
- Individuals of one race or sex are not able to and should not attempt to treat others without respect to race or sex.
- An individual's moral character is necessarily determined by the individual's race or sex.
- 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.
- An individual should feel discomfort, guilt, anguish, or any other form of psychological distress because of the individual's race or sex.
- Systems based on meritocracy or traits such as hard work ethic are racist or sexist or are created by individuals of a particular race to oppress individuals of another race.

#### Course Syllabuses

Under the bill, UWS and WTCS institutions must post all course syllabuses, including any revisions to those syllabuses, on their websites.

#### Enforcement Provisions as Relevant to Senate Amendment 1

Under the bill, an institution that violates the bill's provisions is subject to a 10 percent reduction in state aid. Additionally, if a complainant brings a successful suit against an institution in violation of the bill, the court **may** award the complainant appropriate injunctive relief, damages, court costs, and attorney fees.

## SENATE AMENDMENT 1

### Prohibited Activity

Senate Amendment 1 removes the prohibition on teaching the prohibited concepts in the bill and replaces it with a prohibition on “compelling students to affirm, adopt, or adhere to any of the following tenets in their personal capacities as individuals.” The list of tenets is identical to the list of prohibited concepts in the bill except that the final point reads as follows (the word added by the amendment is in bold):

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

Therefore, the amendment clarifies that the behavior prohibited by the bill is compelling students to affirm, adopt, or adhere to any of the listed tenets.

### Course Syllabuses

The amendment changes the requirement to post all course syllabuses to require that syllabuses be posted only during the period of open enrollment for the institution. Additionally, under the amendment, revisions to course syllabuses do not need to be posted.

### Enforcement Provisions

The bill penalizes an institution in violation of the bill’s provisions with a 10 percent reduction in state aid. Under the amendment, the state aid reduction is lowered to five percent. Additionally, the amendment **requires** rather than allows, a court to award a successful complainant appropriate injunctive relief, damages, court costs, and attorney fees.

### Additional Provisions Created

The amendment creates two new provisions, one relating to required student orientation and one relating to academic freedom of instructors at UWS and WTCS institutions.

#### Student Orientation

The amendment prohibits a UWS or WTCS institution from requiring students to attend a noncredit-earning orientation or training at which the institution adopts any of the tenets prohibited by the bill.

#### Academic Freedom

The amendment clarifies that nothing in the bill or any system or institution policy should be construed to limit the expressive rights and academic freedom of an instructor. The amendment specifies that the bill does not prohibit an instructor from doing any of the following:

- Conducting research, publishing, lecturing, or teaching in an academic setting.
- Speaking publicly as a private citizen on matters of public concern.
- Requiring students to participate in instructional exercises that involve exploring, or arguing for or against, any of the prohibited tenets.

## **BILL HISTORY**

Senator Jacque offered Senate Amendment 1 on November 22, 2021. On February 16, 2022, the Senate Committee on Universities and Technical Colleges recommended adoption of the amendment on a vote of Ayes, 6; Noes, 3; and passage of the bill, as amended, on a vote of Ayes, 5; Noes, 4.

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