SENATE BILL No. 543

By Committee on Ways and Means

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

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

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

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

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

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

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

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

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

(A) Diversity, equity and inclusion;

(B) marginalized groups;

(C) anti-racism;

(D) social justice;

(E) intersectionality; or

(F) any related concept; or

(3) views on or experiences with race, color, ethnicity, national origin or other immutable characteristics of students and coworkers.
(e) "Employee" means an individual employed by a state educational institution.
(f) "Individual" means a natural person.
(g) "Institutional review board" means an administrative body established in compliance with federal law and regulations to protect the rights and welfare of human research subjects recruited to participate in research activities conducted under the auspices of the state educational institution with which such institutional review board is affiliated.
(h) "Person" means an individual, corporation, partnership, limited liability company, business trust, trust, association, organization, protected series or registered series of a domestic limited liability company or other legal entity.
(i) "Preferential consideration" means any act that positively impacts a person's admission to, employment with, engagement as a contractor by or promotion within a state educational institution, including, but not limited to:
(1) Applications for admissions, aid, assistance and benefits for which such person is eligible; and
(2) employment terms, benefits, seniority status, promotion, transfer and appointments for which such person is eligible.
(j) "State educational institution" means the same defined in K.S.A. 76-711, and amendments thereto.
(k) "Student" means an individual enrolled as a student at a state educational institution.

Sec. 3. (a) No state educational institution or institutional review board shall:
(1) Compel, require, induce or solicit any applicant, employee, student or contractor to endorse any discriminatory ideology;
(2) compel, require, induce or solicit any applicant, employee, student or contractor to provide a diversity, equity and inclusion statement; or
(3) provide preferential consideration to any applicant, employee, student or contractor on the basis of such applicant, employee, student or contractor supplying an unsolicited statement based on a discriminatory ideology.
(b) Nothing in this section shall be construed to:
(1) Restrict academic research or coursework;
(2) prevent a state educational institution from requiring applicants to:
(A) Disclose or discuss the content of such applicant's research or artistic creations;
(B) certify compliance with state and federal anti-discrimination laws;
(C) discuss pedagogical approaches or experience with students with
(3) prevent an applicant or candidate from providing on such applicant's or candidate's own initiative and pursuant to no specific requirement or request from a state educational institution any of the information described in this section.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 5. (a) Any employee, whether tenured, employed at will or working pursuant to a contract, who is found to have compelled, required,
induced or solicited an applicant, employee, student or contractor to endorse a discriminatory ideology or provide a diversity, equity and inclusion statement or who provided preferential consideration to an applicant, employee, student or contractor on the basis of such person supplying an unsolicited statement based on a discriminatory ideology shall be disciplined by such employee's employer.

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

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

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