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**SUBSTITUTE HOUSE BILL 1089**

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**State of Washington                      62nd Legislature                      2011 Regular Session**

**By House Higher Education (originally sponsored by Representative McCoy)**

READ FIRST TIME 02/11/11.

1            AN ACT Relating to instructional materials provided in a  
2 specialized format version; amending RCW 28B.10.916; and creating a new  
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The legislature finds that the knowledge,  
6 skill, and ability to succeed both academically and later in a chosen  
7 profession are accumulated through myriad sources, including  
8 instructional materials. Therefore, it is the intent of the  
9 legislature to ensure that students provided with instructional  
10 materials pursuant to RCW 28B.10.916 be permitted to retain those  
11 materials if they so desire.

12            **Sec. 2.** RCW 28B.10.916 and 2004 c 46 s 1 are each amended to read  
13 as follows:

14            (1) An individual, firm, partnership or corporation that publishes  
15 or manufactures instructional materials for students attending any  
16 public or private institution of higher education in the state of  
17 Washington shall provide to the public or private institution of higher  
18 education, for use by students attending the institution, any

1 instructional material in an electronic format mutually agreed upon by  
2 the publisher or manufacturer and the public or private institution of  
3 higher education. Computer files or electronic versions of printed  
4 instructional materials shall be provided; video materials must be  
5 captioned or accompanied by transcriptions of spoken text; and audio  
6 materials must be accompanied by transcriptions. These supplemental  
7 materials shall be provided to the public or private institution of  
8 higher education at no additional cost and in a timely manner, upon  
9 receipt of a written request as provided in subsection (2) of this  
10 section.

11 (2) A written request for supplemental materials must:

12 (a) Certify that a student with a print access disability attending  
13 or registered to attend a public or participating private institution  
14 of higher education has purchased the instructional material or the  
15 public or private institution of higher education has purchased the  
16 instructional material for use by a student with a print access  
17 disability;

18 (b) Certify that the student has a print access disability that  
19 substantially prevents him or her from using standard instructional  
20 materials;

21 (c) Certify that the instructional material is for use by the  
22 student in connection with a course in which he or she is registered or  
23 enrolled at the public or private institution of higher education; and

24 (d) Be signed by the coordinator of services for students with  
25 disabilities at the public or private institution of higher education  
26 or by the college or campus official responsible for monitoring  
27 compliance with the Americans with disabilities act of 1990 (42 U.S.C.  
28 12101 et seq.) at the public or private institution of higher  
29 education.

30 (3) An individual, firm, partnership or corporation specified in  
31 subsection (1) of this section may also require that, in addition to  
32 the requirements in subsection (2) of this section, the request include  
33 a statement signed by the student agreeing to both of the following:

34 (a) He or she will use the instructional material provided in  
35 specialized format solely for his or her own educational purposes; and

36 (b) He or she will not copy or duplicate the instructional material  
37 provided in specialized format for use by others.

1       (4) A public or private institution of higher education that  
2 provides a specialized format version of instructional material  
3 pursuant to this section may not require that the student return the  
4 specialized format version of the instructional material, except that  
5 if the material was translated or transcribed into a specialized format  
6 at the expense of the institution and the cost to reproduce a copy of  
7 the translation or transcription is greater than one hundred dollars,  
8 the institution may require that the student return the specialized  
9 format version.

10       (5) If a public or private institution of higher education provides  
11 a student with the specialized format version of an instructional  
12 material, the media must be copy-protected or the public or private  
13 institution of higher education shall take other reasonable precautions  
14 to ensure that students do not copy or distribute specialized format  
15 versions of instructional materials in violation of the copyright  
16 revision((s)) act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

17       ((+5+)) (6) For purposes of this section:

18       (a) "Instructional material or materials" means textbooks and other  
19 materials that are required or essential to a student's success in a  
20 postsecondary course of study in which a student with a disability is  
21 enrolled. The determination of which materials are "required or  
22 essential to student success" shall be made by the instructor of the  
23 course in consultation with the official making the request in  
24 accordance with guidelines issued pursuant to subsection ((+9+)) (10)  
25 of this section. The term specifically includes both textual and  
26 nontextual information.

27       (b) "Print access disability" means a condition in which a person's  
28 independent reading of, reading comprehension of, or visual access to  
29 materials is limited or reduced due to a sensory, neurological,  
30 cognitive, physical, psychiatric, or other disability recognized by  
31 state or federal law. The term is applicable, but not limited to,  
32 persons who are blind, have low vision, or have reading disorders or  
33 physical disabilities.

34       (c) "Structural integrity" means all instructional material,  
35 including but not limited to the text of the material, sidebars, the  
36 table of contents, chapter headings and subheadings, footnotes,  
37 indexes, glossaries, graphs, charts, illustrations, pictures,  
38 equations, formulas, and bibliographies. Structural order of material

1 shall be maintained. Structural elements, such as headings, lists, and  
2 tables must be identified using current markup and tools. If good  
3 faith efforts fail to produce an agreement between the publisher or  
4 manufacturer and the public or private institution of higher education,  
5 as to an electronic format that will preserve the structural integrity  
6 of instructional materials, the publisher or manufacturer shall provide  
7 the instructional material in a verified and valid HTML format and  
8 shall preserve as much of the structural integrity of the instructional  
9 materials as possible.

10 (d) "Specialized format" means Braille, audio, or digital text that  
11 is exclusively for use by blind or other persons with print access  
12 disabilities.

13 ((+6)) (7) Nothing in this section is to be construed to prohibit  
14 a public or private institution of higher education from assisting a  
15 student with a print access disability through the use of an electronic  
16 version of instructional material gained through this section or by  
17 transcribing or translating or arranging for the transcription or  
18 translation of the instructional material into specialized formats that  
19 provide persons with print access disabilities the ability to have  
20 increased independent access to instructional materials. If such  
21 specialized format is made, the public or private institution of higher  
22 education may share the specialized format version of the instructional  
23 material with other students with print access disabilities for whom  
24 the public or private institution of higher education is authorized to  
25 request electronic versions of instructional material. The addition of  
26 captioning to video material by a Washington public or private  
27 institution of higher education does not constitute an infringement of  
28 copyright.

29 ((+7)) (8) A specialized format version of instructional materials  
30 developed at one public or private institution of higher education in  
31 Washington state may be shared for use by a student at another public  
32 or private institution of higher education in Washington state for whom  
33 the latter public or private institution of higher education is  
34 authorized to request electronic versions of instructional material.

35 ((+8)) (9) Nothing in this section shall be deemed to authorize  
36 any use of instructional materials that would constitute an  
37 infringement of copyright under the copyright revision act of 1976, as  
38 amended (17 U.S.C. Sec. 101 et seq.).

1       (~~(9)~~) (10) The governing boards of public and participating  
2 private institutions of higher education in Washington state shall each  
3 adopt guidelines consistent with this section for its implementation  
4 and administration. At a minimum, the guidelines shall address all of  
5 the following:

6       (a) The designation of materials deemed "required or essential to  
7 student success";

8       (b) The determination of the availability of technology for the  
9 conversion of materials pursuant to subsection (~~(4)~~) (5) of this  
10 section and the conversion of mathematics and science materials  
11 pursuant to subsection (~~(5)~~) (6)(c) of this section;

12       (c) The procedures and standards relating to distribution of files  
13 and materials pursuant to this section;

14       (d) The guidelines shall include procedures for granting exceptions  
15 when it is determined that an individual, firm, partnership or  
16 corporation that publishes or manufactures instructional materials is  
17 not technically able to comply with the requirements of this section;  
18 and

19       (e) Other matters as are deemed necessary or appropriate to carry  
20 out the purposes of this section.

21       (~~(10)~~) (11) A violation of this chapter constitutes an unfair  
22 practice under chapter 49.60 RCW, the law against discrimination. All  
23 rights and remedies under chapter 49.60 RCW, including the right to  
24 file a complaint with the human rights commission and to bring a civil  
25 action, apply.

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