




**Divisive Concepts (CRT)
Legislation**

October 2022
Office of General Counsel

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Summary

- Public Chapter 818 [pc0818.pdf \(tnsosfiles.com\)](#); T.C.A. § 49-7-1901 et seq.
- “Divisive Concepts” are defined terms
- Likely little effect on TBR diversity initiatives
- Prohibits ideological and political litmus tests
- Restrictions on training of students and employees
- Requires survey of students and employees
- Efforts for increased intellectual diversity by DEI employees

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CFSPA

- “[N]o faculty will face adverse employment action for classroom speech, unless it is not reasonably germane to the subject matter of the class as broadly construed and comprises a substantial portion of classroom instruction.”
- But remember, just because you can say something, doesn’t necessarily mean you should.

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Prohibitions

- Shall not discriminate or take action against a student or employee for refusal “to support, believe, endorse, embrace, confess, act upon or assent” to a Divisive Concept (DC)
- Shall not require endorsement of an ideology or political viewpoint for hiring, tenure, promotion, or graduation
- Shall not use state funding to incentivize faculty to incorporate DC into curriculum (not including regular salary)
- Shall not ask ideological or political viewpoint of a student, applicant, job candidate, or candidate for promotion or tenure

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Divisive Concepts (as Defined by PC 818)

13. All Americans are not created equal and are not endowed by their Creator with certain unalienable rights, including, life, liberty, and the pursuit of happiness;
14. Governments should deny to any person within the government's jurisdiction the equal protection of the law;
15. Race or sex stereotyping (ascribing traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of race or sex); and
16. Race or sex scapegoating (assigning fault, blame, or bias to a race or sex, or to members of a race or sex, because of their race or sex, and includes any claim that consciously or subconsciously, and by virtue of a person's race/sex, members of a race/sex are inherently racist/sexist or inclined to oppress others).

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Training

- Training “includes seminars, workshops, trainings, and orientations” (does not include academic seminars and other classes)
- Applies to training for employees and students
- Not limited to training by the institution
- IHEs may not
 - Conduct mandatory training that includes a DC
 - Use training programs or materials that contain a DC
- TBR recommends
 - Reviewing internal trainings for DCs
 - Explaining requirements to external trainers

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Lawsuits

- A student or employee may file suit if an institution
 - penalizes, discriminates against, or takes adverse treatment because of refusal to support, believe, endorse, embrace, confess, act upon, or assent to a Divisive Concept
 - Requires the person to endorse a specific ideology or political viewpoint to be eligible for hiring, tenure, promotion, or graduation.
 - Asks ideological or political viewpoint of a student, job applicant, job candidate, or candidate for promotion or tenure.
- Act does not create cause of action against employees
- State has legal protections, including legal representation and payment of settlement/damages, if an employee is sued in an individual capacity
- [Statement on Protections Against Liability for Employees | Tennessee Board of Regents \(tbr.edu\)](#)



State of Tennessee
PUBLIC CHAPTER NO. 818

HOUSE BILL NO. 2670

By Representatives Mr. Speaker Sexton, Gant, Lamberth, Faison, White, Zachary, Sherrell, Ogles, Griffey, Haston, Powers, Ragan, Reedy, Moody, Cepicky, Williams, Todd, Howell, Lynn, Warner, Hawk, Cochran, Terry, Hurt, Lafferty, Grills, Littleton

Substituted for: Senate Bill No. 2290

By Senators Bell, Kelsey, Bowling, Hensley, Stevens, Rose, White

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 7, relative to higher education.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 7, is amended by adding Sections 2 through 8 of this act as a new part.

SECTION 2. The general assembly finds that the divisive concepts described in Section 3 of this act exacerbate and inflame divisions on the basis of sex, race, ethnicity, religion, color, national origin, and other criteria in ways contrary to the unity of the United States of America and the well-being of this state and its citizens.

SECTION 3.

As used in this part:

(1) "Divisive concept" means a concept that:

(A) One (1) race or sex is inherently superior or inferior to another race or sex;

(B) An individual, by virtue of the individual's race or sex, is inherently privileged, racist, sexist, or oppressive, whether consciously or subconsciously;

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

(D) An individual's moral character is determined by the individual's race or sex;

(E) An individual, by virtue of the individual's race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;

(F) An individual should feel discomfort, guilt, anguish, or another form of psychological distress solely because of the individual's race or sex;

(G) A meritocracy is inherently racist or sexist, or designed by a particular race or sex to oppress another race or sex;

(H) This state or the United States is fundamentally or irredeemably racist or sexist;

(I) Promotes or advocates the violent overthrow of the United States government;

HB2670

(3) Use state-appropriated funds to incentivize, beyond payment of regular salary or other regular compensation, a faculty member to incorporate one (1) or more divisive concepts into academic curricula.

(b) If a public institution of higher education employs employees whose primary duties include diversity, then the duties of such employees must include efforts to strengthen and increase intellectual diversity among the students and faculty of the public institution of higher education at which they are employed.

SECTION 6.

(a) Each public institution of higher education shall conduct a biennial survey of the institution's students and employees to assess the campus climate with regard to diversity of thought and the respondents' comfort level in speaking freely on campus, regardless of political affiliation or ideology. The institution shall publish the results of the biennial survey on the institution's website.

(b) Each public institution of higher education shall present the results of each biennial survey conducted pursuant to subsection (a) to:

(1) The education committee of the senate when the institution's budget is presented to the committee during the next regular session of the general assembly following the institution's completion of the survey;

(2) The finance, ways and means committee of the house of representatives when the institution's budget is presented to the committee during the next regular session of the general assembly following the institution's completion of the survey; and

(3) The education administration committee and education instruction committee of the house of representatives during the next regular session of the general assembly following the institution's completion of the survey.

(c) This section is repealed on July 1, 2028.

SECTION 7.

This part shall not be interpreted to:

(1) Prohibit public institutions of higher education from training students or employees on the non-discrimination requirements of federal or state law;

(2) Infringe on the rights of freedom of speech protected by the First Amendment to the United States Constitution;

(3) Infringe on the rights of academic freedom of faculty in public institutions of higher education;

(4) Require an employee of a public institution of higher education to:

(A) Violate any federal or state law, rule, or regulation; or

(B) Fail to comply with any applicable academic accreditation requirement;

(5) Prohibit an individual who provides training from responding to questions regarding one (1) or more divisive concepts, so long as the response does not endorse or advocate for divisive concepts; or

(6) Prohibit public institutions of higher education from promoting diversity, equity, and inclusion; provided, that such efforts are consistent with the provisions of this part.

SECTION 8. If any provision of this part or its application to a person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of this part that