AN ACT CONCERNING ACADEMIC FREEDOM AT PUBLIC INSTITUTIONS OF HIGHER EDUCATION.

SUMMARY

This bill requires, by October 1, 2019, the Board of Regents for Higher Education (BOR) and UConn Board of Trustees (BOT) to ensure that their academic freedom policies include protections for the content of course and degree programs at public higher education institutions within their jurisdiction.

Existing law requires BOR to establish policies for the Connecticut State University System and the community-technical college system to protect academic freedom and the content of course and degree programs. UConn is subject to the same requirements under law.

Under the bill, BOR and BOT must ensure that their academic freedom policies (1) protect faculty members from adverse personnel action resulting from public or private expression of faculty regarding certain matters, and (2) provide a process for faculty members to challenge adverse personnel actions related to academic freedom. Faculty members may still be subject to adverse personnel action for expression that meets certain criteria.

BOR and BOT must report on their academic freedom policies, including protections for course and degree program content, to the Higher Education and Employment Advancement Committee by January 1, 2020.

EFFECTIVE DATE: July 1, 2019

FACULTY PROTECTION UNDER ACADEMIC FREEDOM POLICIES

The bill requires that BOR’s and BOT’s academic freedom policies protect faculty members from adverse personnel action resulting from
their public or private expression relating to (1) their scholarship, research, or teaching, and (2) matters of public concern, including matters of political, social, or economic significance, or criticism of institutional policy or administration.

Under the bill, a “faculty member” is a person who provides scholarship, conducts research, or teaches at a public higher education institution, including (1) tenured, nontenured, and adjunct professors, (2) visiting lecturers, and (3) graduate student instructors. Faculty members do not include administrative faculty or staff.

**ADVERSE PERSONNEL ACTIONS AND EXCEPTIONS**

The bill defines “adverse personnel action” as an action that (1) negatively impacts a faculty member’s eligibility for promotion or tenure, compensation, ability to provide scholarship, conduct research, or teach, or (2) results in their transfer, termination, suspension, or other discipline.

Under the bill, notwithstanding the academic freedom policies at public higher education institutions, a faculty member may be subject to adverse personnel action for expressions:

1. disrupting the academic and instructional purpose of the institution to an extent that would outweigh their right to academic freedom;

2. constituting plagiarism, fraud, or misconduct in the context of their academic research;

3. substantially or materially interfering with their bona fide job performance; or

4. deliberately misrepresenting their academic expertise.

**CHALLENGING ADVERSE PERSONNEL ACTIONS**

The bill requires BOR and BOT to provide a (1) process for faculty members to challenge adverse personnel actions on the grounds of violating academic freedom, and (2) list of objective criteria to
determine whether an adverse personnel action violates a faculty member’s right to academic freedom.

Under the bill, a faculty member who believes his or her employing public higher education institution violated his or her academic freedom may pursue the process provided in the academic freedom policy to challenge adverse personnel actions.

The bill also specifies that such a faculty member may seek damages from the institution, including punitive damages and reasonable attorney’s fees, under an existing law on employer violations of First Amendment Rights (see BACKGROUND).

BACKGROUND

**Employer Liability for Disciplining Certain Speech**

Under existing law, employers are liable to an employee they discipline or discharge for conduct protected by certain constitutional rights, unless the conduct substantially or materially interferes with job performance or the employer-employee relationship. The rights are those guaranteed by the First Amendment to the U.S. Constitution (including freedom of speech) and similar state constitutional provisions. Employers are liable for damages, including potential punitive damages and reasonable attorney’s fees. If the court determines that the case was brought without substantial justification it may award costs and reasonable attorney’s fees to the employer (CGS § 31-51q).

**COMMITTEE ACTION**

Higher Education and Employment Advancement Committee

Joint Favorable Substitute
Yea 15 Nay 6 (03/12/2019)