

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 912**

1 On page 1 of the printed A-engrossed bill, line 2, after “provisions;” delete
2 the rest of the line and line 3 and insert “amending ORS 339.396; and de-
3 claring an emergency.”.

4 Delete lines 5 through 17 and delete pages 2 through 6 and insert:

5 **“SECTION 1. Section 2 of this 2019 Act is added to and made a part**
6 **of ORS 339.370 to 339.396.**

7 **“SECTION 2. (1) As used in this section:**

8 **“(a) ‘Independent education provider’ means an education provider**
9 **that:**

10 **“(A) Is not subject to standards adopted by rule of the State Board**
11 **of Education; and**

12 **“(B) May not be subjected to ORS 327.103 or 334.217 or any statute,**
13 **rule, charter or legal agreement with a state agency or a political**
14 **subdivision of this state that authorizes the imposition of sanctions**
15 **or the withholding of state funding for failure to comply with the**
16 **standards adopted by rule of the State Board of Education.**

17 **“(b) ‘Student nonconsensual sexual conduct’ means:**

18 **“(A) Conduct that constitutes teen dating violence, as that term is**
19 **defined in ORS 339.366; or**

20 **“(B) Any verbal or physical conduct or verbal, written or electronic**
21 **communications by a student that:**

1 “(i) Is sexual in nature;
2 “(ii) Involves another student; and
3 “(iii) Has the effect of unreasonably interfering with the other
4 student’s educational performance or of creating an intimidating,
5 hostile or offensive educational environment.
6 “(2) An independent education provider must adopt policies on the
7 reporting of suspected student nonconsensual sexual conduct. The
8 policies shall:
9 “(a) Specify that student nonconsensual sexual conduct is not tol-
10 erated.
11 “(b) Specify that all school employees and students of the inde-
12 pendent education provider are subject to the policies.
13 “(c) Require all school employees who have reasonable cause to
14 believe that a student has engaged in student nonconsensual sexual
15 conduct to report:
16 “(A) To the administrator designated as provided by paragraph (d)
17 of this subsection all incidents of suspected student nonconsensual
18 sexual conduct; and
19 “(B) To a law enforcement agency, the Department of Human Ser-
20 vices or a designee of the department as required by ORS 419B.010 and
21 419B.015 all incidents of student nonconsensual sexual conduct that
22 may constitute abuse, in addition to any report made as required un-
23 der subparagraph (A) of this paragraph.
24 “(d) Designate an administrator to receive reports of suspected
25 student nonconsensual sexual conduct and specify the procedures to
26 be followed by the administrator upon receipt of a report.
27 “(e) Specify the procedures to be followed after a report of sus-
28 pected student nonconsensual sexual conduct is received, including
29 providing notification that:
30 “(A) All suspected student nonconsensual sexual conduct that may

1 constitute abuse will be reported to a law enforcement agency, the
2 Department of Human Services or a designee of the department for
3 investigation;

4 “(B) The independent education provider will conduct an investi-
5 gation of all reports not investigated as provided by subparagraph (A)
6 of this paragraph and may conduct an investigation of reports inves-
7 tigated as provided by subparagraph (A) of this paragraph; and

8 “(C) The independent education provider will take necessary actions
9 to ensure a student’s safety after a report is received.

10 “(f) Require the posting in each school building of:

11 “(A) The name and contact information for the administrator des-
12 igned to receive reports of suspected student nonconsensual sexual
13 conduct and the procedures the administrator will follow upon receipt
14 of a report; and

15 “(B) The contact information for making a report to a law
16 enforcement agency, the Department of Human Services or a designee
17 of the department as required by ORS 419B.010 and 419B.015 and a
18 statement that the duty to report conduct that may constitute abuse
19 is in addition to any requirement to make a report to an administra-
20 tor.

21 “(g) Specify that the initiation of a report in good faith about sus-
22 pected student nonconsensual sexual conduct may not adversely affect
23 any terms or conditions of employment or the work environment of
24 the person who initiated the report.

25 “(h) Specify that the independent education provider or any school
26 employee will not discipline a student for the initiation of a report in
27 good faith about suspected student nonconsensual sexual conduct.

28 “(i) Require notification, as allowed by state and federal law, by the
29 independent education provider to the person who was subjected to the
30 suspected student nonconsensual sexual conduct about any actions

1 taken by the independent education provider based on the report.

2 “(j) Require the independent education provider to furnish to a
3 school employee at the time of hire a description of conduct that may
4 constitute student nonconsensual sexual conduct.

5 “(k) Specify and make available to students and school employees
6 a policy of appropriate electronic communications.

7 “(3) The policies adopted under subsection (2) of this section must,
8 to the greatest extent practicable, align with the requirements of ORS
9 339.372 and 339.388.

10 “SECTION 3. ORS 339.396 is amended to read:

11 “339.396. (1) An education provider that fails to adopt policies as
12 provided by ORS 339.372 may be determined to be in noncompliance
13 with ORS 339.372 by:

14 “(a) The Superintendent of Public Instruction and may be subjected
15 to sanctions, including the withholding of state funding, as established
16 by rule of the State Board of Education; or

17 “(b) The sponsor of the public charter school, if the education pro-
18 vider is a public charter school, and may be subjected to sanctions,
19 including the withholding of state funding by the sponsor, as estab-
20 lished by rule of the State Board of Education.

21 “(2) Except as provided in subsections (3) and (4) of this section,
22 nothing in ORS 339.370 to 339.400 creates a new public or private cause of
23 action or precludes an existing cause of action.

24 “(3)(a) A student of an education provider that cannot be subjected
25 to sanctions as described in subsection (1) of this section, or the parent
26 or guardian of a student of an education provider that cannot be sub-
27 jected to sanctions as described in subsection (1) of this section, may
28 bring a civil action and recover damages for the greater of \$1,000 or
29 the total amount for special and general damages, including damages
30 for emotional distress, if:

1 **“(A) A school employee for the education provider who is required**
2 **to make a report under ORS 339.388 (1)(b) fails to make the report;**

3 **“(B) The school employee described in subparagraph (A) of this**
4 **paragraph is:**

5 **“(i) Regularly performing job duties that, were the school employee**
6 **employed by a school district, would require the school employee to**
7 **be licensed by the Teacher Standards and Practices Commission; and**

8 **“(ii) Not licensed by the Teacher Standards and Practices Commis-**
9 **sion; and**

10 **“(C) The student is subjected to conduct for which a report is re-**
11 **quired under ORS 339.388 (1)(b) and the conduct:**

12 **“(i) Is by another school employee for the education provider about**
13 **whom the school employee should have had a reasonable cause to be-**
14 **lieve had previously engaged in conduct for which a report is required**
15 **under ORS 339.388 (1)(b); and**

16 **“(ii) Occurred after the school employee should have had a reason-**
17 **able cause to believe that the other school employee had previously**
18 **engaged in conduct for which a report is required under ORS 339.338**
19 **(1)(b).**

20 **“(b) A court may award reasonable attorney fees to the prevailing**
21 **plaintiff in an action under this subsection.**

22 **“(4)(a) A student of an education provider that cannot be subjected**
23 **to sanctions as described in subsection (1) of this section, or the parent**
24 **or guardian of a student of an education provider that cannot be sub-**
25 **jected to sanctions as described in subsection (1) of this section, may**
26 **bring a civil action and recover damages for the greater of \$1,000 or**
27 **the total amount for special and general damages, including damages**
28 **for emotional distress, if:**

29 **“(A) A school employee for the education provider who is required**
30 **to make a report under ORS 339.388 (1)(b) or section 2 of this 2019 Act**

1 fails to make the report;

2 “(B) The school employee described in subparagraph (A) of this
3 paragraph is:

4 “(i) Regularly performing job duties that, were the school employee
5 employed by a school district, would require the school employee to
6 be licensed by the Teacher Standards and Practices Commission; and

7 “(ii) Not licensed by the Teacher Standards and Practices Commis-
8 sion; and

9 “(C) The student is subjected to conduct for which a report is re-
10 quired under ORS 339.388 (1)(b) or section 2 of the 2019 Act and the
11 conduct:

12 “(i) Is by another student at the education provider about whom the
13 school employee should have had a reasonable cause to believe had
14 previously engaged in conduct for which a report is required under
15 ORS 339.388 (1)(b) or section 2 of this 2019 Act; and

16 “(ii) Occurred after the school employee should have had a reason-
17 able cause to believe that the other student had engaged in the con-
18 duct.

19 “(b) A court may award reasonable attorney fees to the prevailing
20 plaintiff in an action under this subsection.

21 **“SECTION 4. The amendments to ORS 339.396 by section 3 of this**
22 **2019 Act apply to causes of action arising on or after the effective date**
23 **of this 2019 Act.**

24 **“SECTION 5. (1) The Department of Education shall evaluate**
25 **criminal records checks that were made under ORS 326.603 by the de-**
26 **partment from January 1, 2009, until January 1, 2019, for the purpose**
27 **of determining:**

28 “(a) Which private schools, as defined in ORS 339.370, requested a
29 criminal records check; and

30 “(b) The number of criminal records checks requested by each

1 school identified under paragraph (a) of this subsection.

2 “(2) The department shall report the results of the evaluation, and
3 may include recommendations for legislation, to an interim committee
4 of the Legislative Assembly related to education no later than Sep-
5 tember 15, 2020.

6 “SECTION 6. This 2019 Act being necessary for the immediate
7 preservation of the public peace, health and safety, an emergency is
8 declared to exist, and this 2019 Act takes effect July 1, 2019.”.

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