

Divisive Concepts Act Training

Office of the General Counsel
www.tnstate.edu/legal



Introduction

Introduction to the Divisive Concepts Act

The General Assembly has passed a law, in which it stated that “divisive concepts,” as defined in T.C.A. § 49-7-1902, “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.”

The General Assembly enacted certain restrictions on Tennessee public institutions of higher education with respect to those concepts it has deemed “divisive concepts.”

Introduction to the Divisive Concepts Act

Relevant Law:

- [Public Chapter 268](#) – known as the "Divisive Concepts Act"
- [Public Chapter 818](#) – the Tennessee Higher Education Freedom of Expression and Transparency Act (amends Public Chapter 268)
- Tennessee Code Annotated (T.C.A.) §§ 49-7-1901 through 49-7-1908 – codified legislation

“Divisive Concepts” Defined

Introduction to the Divisive Concepts Act

- The law places some new obligations on the University, including posting/notice requirements, training, reporting, and receiving and investigating complaints of violations of the Act.
- The Act recognizes freedom of speech and academic freedom and requires compliance with other federal and state laws, rules and regulations.

What are “Divisive Concepts” under TN law?

Under the Act, the term “divisive concept” means a concept that:

1. One (1) race or sex is inherently superior to another race or sex;
2. An individual, by virtue of the individual's race or sex, is inherently privileged, racist, sexist, or oppressive, whether consciously or subconsciously;
3. An individual should be discriminated against or receive adverse treatment because of the individual's race or sex;
4. An individual's moral character is determined by the individual's race or sex;

What are “Divisive Concepts” under TN law?

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5. 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;
6. An individual should feel discomfort, guilt, anguish, or another form of psychological distress solely because of the individual's race or sex;
7. A meritocracy is inherently racist or sexist, or designed by a particular race or sex to oppress members of another race or sex;
8. This state [Tennessee] or the United States is fundamentally or irredeemably racist or sexist;

What are “Divisive Concepts” under TN law?

Under the Act, the term “divisive concept” means a concept that:

9. Promoting or advocating the violent overthrow of the United States government;
10. Promoting division between, or resentment of, a race, sex, religion, creed, nonviolent political affiliation, social class, or class of people;
11. Ascribing character traits, values, moral or ethical codes, privileges, or beliefs to a race or sex, or to an individual because of the individual's race or sex;
12. The rule of law does not exist, but instead is a series of power relationships and struggles among racial or other groups;

What are “Divisive Concepts” under TN law?

Under the Act, the term “divisive concept” means a concept that:

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. Includes race or sex stereotyping, meaning ascribing traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex; or

What are “Divisive Concepts” under TN law?

According to the Act, the term “divisive concept” means a concept that:

16. Includes race or sex scapegoating, meaning 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 or sex, members of a race are inherently racist or inclined to oppress others, or that members of a sex are inherently sexist or inclined to oppress others.

T.C.A. § 49-7-1902

Restrictions under the Act

Divisive Concepts Act - Restrictions

- No mandatory training of students or employees if the training includes divisive concepts.
 - Training “includes seminars, workshops, trainings, and orientations.”
- No use of training programs or materials for students or employees if the program or material includes divisive concepts.
- No use of state-appropriated funds to incentivize, beyond payment of regular salary or other regular compensation, a faculty member to incorporate divisive concepts into academic curricula.
- No approval or use of state funds for fees, dues, subscriptions, or travel in conjunction with the membership, meetings, or activities of an organization if participation in such organization requires an individual, or an individual's employer, to endorse or promote a divisive concept.

T.C.A. § 49-7-1904



Divisive Concepts Act - Restrictions

A student or employee may not be:

- Penalized, discriminated against, or receive any adverse treatment for refusing to support, believe, endorse, embrace, confess, act upon, or otherwise assent to divisive concepts.
- Required to endorse a specific ideology or political viewpoint to be eligible for hiring, tenure, promotion, or graduation, and institutions shall not ask the ideological or political viewpoint of a student, job applicant, job candidate, or candidate for promotion or tenure.
- Required to submit a personal diversity statement or to affirm the applicant's agreement with a diversity statement as part of the application or admissions.

The Act provides a cause of action for violations of the T.C.A. § 49-7-1903 described above.



Divisive Concepts Act - Complaints

- Students or employees who believe a violation of T.C.A. § 49-7-1903 have occurred may file a report with the University.
 - The Office of the General Counsel will investigate, and the University will take appropriate steps to correct any violations found to have occurred.
 - University must report violations and any corrective action to the Comptroller of the Treasury.
- Reports can be submitted at www.tnstate.edu/divisiveconcepts.

Divisive Concepts Act - Requirements

- If an employee's job title includes "diversity, equity, or inclusion"
 - The University must ensure that the employee's efforts strengthen and increase intellectual diversity and promote a climate that facilitates the free and respectful exchange of ideas; and
 - The University must ensure that the employee's duties include efforts devoted to supporting student academic achievement and workforce readiness, such as mentoring, career readiness and support, workforce development, or other related learning support activities necessary for the academic and professional success of all students.
 - If an employee's primary job duties require compliance with state or federal laws that conflict with the above, that employee is exempt.
 - The University must report compliance with the above to the TSU President.
- DEI efforts are not prohibited; provided they are consistent with the Act.

T.C.A. §§ 49-7-1904, -1906



Divisive Concepts Act - Requirements

- The University must conduct a survey -
 - Survey students and employees every-other-year
 - “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”
 - Survey results must be published on the University’s website
 - The University must present results to select state senate and house of representative committees when the University’s budget is presented
 - Requirement runs through July 1, 2028 (then repealed)
 - This will be coordinated by the Office of the General Counsel

T.C.A. § 49-7-1905



*Other Requirements of the
Divisive Concepts Act*

Divisive Concepts Act - Requirements

- Campus Access - when approving or scheduling the use of University property, the University may not show bias or favoritism for or against:
 - A student group that is peaceful and requests to use the institution's property in a peaceful and lawful manner;
 - A guest speaker's, or a guest speaker's student-sponsoring group's, viewpoint, race, creed, color, religion, non-violent political ideology, or non-violent political party affiliation; or
 - A student group that, or a guest speaker who, intends to maintain a peaceful campus presence and peaceful use of the institution's property on grounds that the institution has received threatened simple breaches of the peace or non-destructive disruptions from groups or individuals who oppose the student group's or guest speaker's presence on campus.

Divisive Concepts Act - Requirements

- Cannot deny a student group access to the University's property if the property is routinely used by other student groups.
- University may restrict or deny use of the University's property for public displays, organized public gatherings, or public demonstrations if the display, gathering, or demonstration would violate T.C.A. § 39-17-902 (obscenity law) or § 49-7-2405 (Campus Free Speech Protection Act).
- Fees – cannot require a student group to pay fees or security deposits that are not charged to all other student groups.

Divisive Concepts Act - Requirements

- Notification - the University must notify students and employees about the restrictions in T.C.A. § 49-7-1903 and the definition of divisive concepts in § 49-7-1904
 - Must post on website and
 - Must include on “introductory materials” provided to new students and employees
- Training - the University must provide training to employees to ensure compliance with T.C.A. § 49-7-1904 requirements

T.C.A. § 49-7-1903



*Protections Recognized under
the Divisive Concepts Act*

Divisive Concepts Act - Protections

1. The Act does not prohibit public institutions of higher education from training students or employees on the non-discrimination requirements of federal or state law;
2. The Act does not infringe on the rights of freedom of speech protected by the First Amendment to the United States Constitution;
3. The Act does not infringe on the rights of academic freedom of faculty in public institutions of higher education;
4. The Act does not prohibit public institutions of higher education from promoting diversity, equity, and inclusion; provided, that such efforts are consistent with the provisions of this part.

T.C.A. § 49-7-1904



Divisive Concepts Act - Protections

4. Act does not require an employee to:
 - Violate any federal or state law, rule, or regulation; or
 - Violate any applicable academic accreditation requirement;
5. The Act does not prohibit an individual who provides training from responding to questions regarding one or more divisive concepts, so long as the response does not endorse or advocate for divisive concepts; or

T.C.A. § 49-7-1904



Please contact the Office of the General Counsel
for additional information concerning
the Divisive Concepts Act.

<https://tnstate.edu/divisiveconcepts>

