

BILL ANALYSIS

Senate Research Center
85R11275 KJE-D

S.B. 1151
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Higher Education
4/24/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Amidst national outrage and persistent disregard for protection of free speech there is a dire need to craft effective policy to protect students' First Amendment rights. Speech codes on campuses substantially limiting First Amendment rights are common and becoming more prevalent. Schools often designate, arbitrarily, "offensive" speech, thus limiting dialogue and punishing students for exercising their rights. In the case of "offensive" speech, a lack of clear definitions opens students up to the will of the administration to issue violations.

S.B. 1151 seeks to rectify the issue by defining expressive activities in statute and requiring universities to adopt policies protecting a student's right to such activities.

As proposed, S.B. 1151 amends current law relating to the protection of expressive activities at public institutions of higher education.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to an institution of higher education in SECTION 1 (Section 51.9315, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter Z, Chapter 51, Education Code, by adding Section 51.9315, as follows:

Sec. 51.9315. PROTECTED EXPRESSION ON CAMPUS. (a) Defines "expressive activities," "institution of higher education," and "university system."

(b) Provides that it is the policy of this state to protect the expressive rights of persons guaranteed by the constitutions of the United States and of this state by ensuring that all persons are authorized to assemble peaceably on the campuses of institutions of higher education (IHE) for expressive activities and that the expressive rights of persons on the campuses of IHE are not unnecessarily restricted or impeded by rules or policies adopted by the IHEs.

(c) Requires an IHE to ensure that the common outdoor areas of the IHE's campus are deemed traditional public forums and permit any person to engage in expressive activities on those areas of the IHE's campus freely, as long as the person's conduct is not unlawful and does not materially and substantially disrupt the functioning of the IHE.

(d) Authorizes an IHE, notwithstanding Subsection (c), by rule, to maintain and enforce reasonable restrictions on the time, place, and manner of expressive activities on the common outdoor areas of the IHE's campus if those restrictions are narrowly tailored to serve a significant institutional interest; employ clear, published, content-neutral, and viewpoint-neutral criteria; provide for ample alternative means of expression; and allow members of the university community to spontaneously and contemporaneously assemble or distribute written material without a permit or other permission from the IHE.

(e) Provides that Subsections (c) and (d) do not limit the right of student expression at other campus locations.

(f) Requires each IHE to adopt a policy that encourages the free and open exchange of ideas, including unpopular, controversial, or offensive ideas, in classrooms and all other campus locations. Requires each IHE to adopt a policy that prohibits punishing a student in any manner for engaging in expressive activities protected by the First Amendment to the United States Constitution or Section 8 (Freedom of Speech and Press; Libel), Article I (Bill of Rights), Texas Constitution. Requires each IHE to adopt a policy that requires the IHE to maintain an official position of neutrality on issues of public controversy. Requires each IHE to adopt a policy that prohibits any IHE official or employee from disinviting a speaker who has been requested to speak at the IHE by members of the university community. Requires each IHE to adopt a policy that establishes disciplinary sanctions for students or employees who unduly interfere with the expressive activities of others on campus.

(g) Requires each IHE to annually provide to students enrolled at and employees of the IHE a copy of all policies adopted in accordance with this section.

(h) Authorizes the Texas attorney general or a person whose expressive rights have been violated under this section, not later than the first anniversary of the date that a violation is alleged to have occurred at an IHE, to bring an action for injunctive relief to compel the IHE to comply with this section or to recover compensatory damages and reasonable court costs and attorney's fees. Requires the court, in an action for damages brought under this subsection, if the court finds that an IHE has violated this section, to award the aggrieved person the greater of certain amounts.

(i) Provides that for purposes of computing the limitation period under Subsection (h), each day of a continuing violation of this section, including each day that a rule or policy of an IHE that violates this section remains in effect, constitutes a separate violation.

(j) Requires the governing board (board) of each IHE or university system to create a subcommittee of the board to address free speech issues at the IHE or IHEs governed by the board. Requires the subcommittee, not later than September 1 of each year, to prepare and submit to the governor, the members of the legislature, and the board a report on free speech issues that arose at the IHE or IHEs during the preceding academic year. Requires that the report includes, for each IHE governed by the board, certain information.

SECTION 2. Requires the board of each public IHE or university system, not later than September 1, 2017, to create the subcommittee required under Section 51.9315(j), Education Code, as added by this Act. Requires each board's subcommittee to prepare and submit its required initial report not later than September 1, 2018.

SECTION 3. Effective date: September 1, 2017.