

By: Wilson

H.B. No. 3866

A BILL TO BE ENTITLED

AN ACT

relating to the protection of expressive activities at public institutions of higher education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9315 to read as follows:

Sec. 51.9315. PROTECTED EXPRESSION ON CAMPUS. (a) In this section:

(1) "Expressive activities" include assemblies, protests, speeches, the distribution of written material, the carrying of signs, and the circulation of petitions. The term does not include commercial speech.

(2) "Institution of higher education" and "university system" have the meanings assigned by Section 61.003.

(b) 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:

(1) all persons may assemble peaceably on the campuses of institutions of higher education for expressive activities; and

(2) the expressive rights of persons on the campuses of institutions of higher education are not unnecessarily restricted or impeded by rules or policies adopted by the institutions.

(c) An institution of higher education shall:

1           (1) ensure that the common outdoor areas of the  
2 institution's campus are deemed traditional public forums; and

3           (2) permit any person to engage in expressive  
4 activities on those areas of the institution's campus freely, as  
5 long as the person's conduct:

6                   (A) is not unlawful; and

7                   (B) does not materially and substantially  
8 disrupt the functioning of the institution.

9           (d) Notwithstanding Subsection (c), an institution of  
10 higher education by rule may maintain and enforce reasonable  
11 restrictions on the time, place, and manner of expressive  
12 activities on the common outdoor areas of the institution's campus  
13 if those restrictions:

14                   (1) are narrowly tailored to serve a significant  
15 institutional interest;

16                   (2) employ clear, published, content-neutral, and  
17 viewpoint-neutral criteria;

18                   (3) provide for ample alternative means of expression;  
19 and

20                   (4) allow members of the university community to  
21 spontaneously and contemporaneously assemble or distribute written  
22 material without a permit or other permission from the institution.

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

25           (f) Each institution of higher education shall adopt a  
26 policy that:

27                   (1) encourages the free and open exchange of ideas,

1 including unpopular, controversial, or offensive ideas, in  
2 classrooms and all other campus locations;

3 (2) prohibits punishing a student in any manner for  
4 engaging in expressive activities protected by the First Amendment  
5 to the United States Constitution or Section 8, Article I, Texas  
6 Constitution;

7 (3) requires the institution to maintain an official  
8 position of neutrality on issues of public controversy;

9 (4) prohibits any institution official or employee  
10 from disinviting a speaker who has been requested to speak at the  
11 institution by members of the university community; and

12 (5) establishes disciplinary sanctions for students  
13 or employees who unduly interfere with the expressive activities of  
14 others on campus.

15 (g) Each institution of higher education annually shall  
16 provide to students enrolled at and employees of the institution a  
17 copy of all policies adopted in accordance with this section.

18 (h) Not later than the first anniversary of the date that a  
19 violation of this section is alleged to have occurred at an  
20 institution of higher education, the attorney general or a person  
21 whose expressive rights have been violated under this section may  
22 bring an action for injunctive relief to compel the institution to  
23 comply with this section or to recover compensatory damages and  
24 reasonable court costs and attorney's fees. In an action for  
25 damages brought under this subsection, if the court finds that an  
26 institution of higher education has violated this section, the  
27 court shall award the aggrieved person the greater of:

1           (1) the amount of the person's compensatory damages;

2 or

3           (2) \$1,000.

4           (i) For purposes of computing the limitation period under  
5 Subsection (h), each day of a continuing violation of this section,  
6 including each day that a rule or policy of an institution of higher  
7 education that violates this section remains in effect, constitutes  
8 a separate violation.

9           (j) The governing board of each institution of higher  
10 education or university system shall create a subcommittee of the  
11 board to address free speech issues at the institution or  
12 institutions governed by the board. Not later than September 1 of  
13 each year, the subcommittee shall prepare and submit to the  
14 governor, the members of the legislature, and the governing board a  
15 report on free speech issues that arose at the institution or  
16 institutions during the preceding academic year. The report must  
17 include, for each institution governed by the board:

18           (1) a description of any barriers to or disruptions of  
19 expressive activities at the institution;

20           (2) a summary of the institution's handling of free  
21 speech issues, including any disciplinary action taken related to  
22 the policies adopted under this section;

23           (3) an analysis of any substantial difficulties,  
24 controversies, or successes in maintaining the institution's  
25 official position of neutrality on issues of public controversy;  
26 and

27           (4) any recommendations for legislative or other

1 action.

2           SECTION 2. Not later than September 1, 2017, the governing  
3 board of each public institution of higher education or university  
4 system shall create the subcommittee required under Section  
5 51.9315(j), Education Code, as added by this Act. Each governing  
6 board's subcommittee shall prepare and submit its initial report  
7 required under that section not later than September 1, 2018.

8           SECTION 3. This Act takes effect September 1, 2017.