By:  Cain, Oliverson, Goldman, Phelan, Wilson, H.B. No. 2100

     et al.

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.  The legislature finds that:

(1)  freedom of expression is of critical importance and requires each public institution of higher education to ensure free, robust, and uninhibited debate and deliberations by students enrolled at the institution, regardless of whether the students are on or off campus; and

(2)  it is a matter of statewide concern that all public institutions of higher education officially recognize freedom of speech as a fundamental right.

SECTION 2.  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)  "Employee" has the meaning assigned by Section 51.934.

(2)  "Expressive activities" means any speech or expressive conduct protected by the First Amendment to the United States Constitution or Section 8, Article I, Texas Constitution, and includes assemblies, protests, speeches, the distribution of written or visual material, the carrying of signs, and the circulation of petitions. The term does not include commercial speech.

(3)  "Institution of higher education" has the meaning assigned by Section 61.003.

(4)  "Matter of public concern" means a statement or activity related to:

(A)  a public official, public figure, or other person who has drawn substantial public attention due to the person's official acts, fame, notoriety, or celebrity;

(B)  a matter of political, governmental, social, or other concern to the community; or

(C)  a subject of general interest and of value and concern to the public.

(b)  It is the policy of this state and the purpose of this section 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 lawfully present on the campus of an institution of higher education may engage in, observe, or listen to expressive activities; and

(2)  the expressive rights of persons lawfully present on the campus of an institution of higher education are not unnecessarily restricted or impeded by rules or policies adopted by the institution.

(c)  An institution of higher education shall:

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

(2)  permit any person lawfully present to engage in, observe, or listen to expressive activities in those areas of the institution's campus freely, as long as the person's conduct:

(A)  is not unlawful; and

(B)  does not materially and substantially:

(i)  disrupt the functioning of the institution; or

(ii)  interfere with the rights of others to engage in, observe, or listen to expressive activities.

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

(1)  are necessary to further a compelling institutional interest and are the least restrictive means of furthering that interest;

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

(3)  leave open ample alternative means of expression; and

(4)  allow students enrolled at and employees of the institution to spontaneously and contemporaneously assemble or distribute written material without a permit or other permission from the institution.

(e)  Subsections (c) and (d) do not:

(1)  limit the right of student expression at other campus locations; or

(2)  prohibit faculty members from maintaining order in the classroom.

(f)  The protections under this section apply equally to students and to student groups and organizations, regardless of whether the group or organization is recognized by or registered with the institution of higher education.

(g)  Each institution of higher education shall adopt a policy detailing students' and employees' rights and responsibilities regarding expressive activities at the institution. The policy must:

(1)  allow:

(A)  any person to, subject to Subsection (c)(2) and reasonable restrictions adopted under Subsection (d), engage in, observe, or listen to expressive activities on campus, including by responding to the expressive activities of others; and

(B)  students, student groups and organizations, and employees to, subject to Subsection (j), invite speakers to speak on campus;

(2)  establish disciplinary sanctions for students or student groups or organizations who materially and substantially interfere with the rights of others to engage in, observe, or listen to expressive activities on campus;

(3)  include a grievance procedure for addressing complaints of a violation of this section;

(4)  encourage the free and open exchange of ideas, regardless of the content or viewpoint expressed, in classrooms and all other campus locations;

(5)  prohibit the institution or any employee of the institution from punishing a student or employee in any manner for engaging in, observing, or listening to expressive activities;

(6)  prohibit the institution from taking official action on a matter of public concern in a manner that requires a student or employee to publicly express a particular viewpoint on that matter;

(7)  prohibit any institution official or employee from disinviting a speaker who has been approved by the institution to speak on campus and has been invited to speak on campus by a student enrolled at the institution, a student group or organization at the institution, or an employee of the institution;

(8)  require the institution to strive to maintain an official position of neutrality on matters of public concern except as necessary for the institution's operations;

(9)  to the extent consistent with state and federal law, require the institution to permit a student group or organization formed for the purpose of exercising expressive rights to establish and maintain membership and leadership qualifications for the group or organization that further the group's or organization's purpose, including by requiring the group's or organization's leaders or members to:

(A)  adhere to or comply with the group's or organization's sincerely held beliefs or sincere standards of conduct; or

(B)  be committed to furthering the group's or organization's mission or purpose;

(10)  contain statements that:

(A)  it is not the proper role of the institution to shield persons from speech or expressive conduct protected by the First Amendment to the United States Constitution or Section 8, Article I, Texas Constitution, including, without limitation, ideas or opinions that those persons may find unwelcome or disagreeable; and

(B)  subject to Subsection (c)(2) and reasonable restrictions adopted under Subsection (d), students and employees are entitled to:

(i)  discuss any problem; and

(ii)  spontaneously and contemporaneously assemble or distribute written or visual material without a permit or other permission from the institution;

(11)  contain a statement that, pursuant to Section 51.935, a person commits an offense if the person, alone or in concert with others, intentionally engages in disruptive activity on the campus or property of an institution of higher education;

(12)  be approved by a majority vote of the institution's governing board before final adoption; and

(13)  be posted on the institution's Internet website.

(h)  Each institution of higher education shall adopt procedures for the institution's disciplinary process regarding an alleged violation of the institution's student code of conduct involving expressive activities and provide notice of those procedures to each student enrolled at the institution. At a minimum, the procedures must entitle the student alleged to have violated the institution's student code of conduct to:

(1)  receive written notice of the allegation before the initiation of the disciplinary process;

(2)  review evidence supporting the allegation;

(3)  present a defense, including by calling witnesses for the student and confronting witnesses against the student;

(4)  have the institution's determination of responsibility made by an impartial arbiter or panel;

(5)  appeal a determination finding the student responsible for the violation; and

(6)  if a potential sanction for the violation is suspension for a period of more than 30 days or expulsion from the institution, have assistance of counsel during each stage of the disciplinary process.

(i)  On the second or any subsequent determination by an institution of higher education that a student is responsible for violating the institution's student code of conduct by materially and substantially interfering with the expressive activities of others, the institution shall:

(1)  suspend the student for at least one semester or term; or

(2)  not later than two weeks after resolving the disciplinary process, provide to the committee on free expression for the institution established under this section an explanation of the reason the institution did not impose a sanction on the student under Subdivision (1).

(j)  In determining whether to approve a speaker to speak on campus or in determining the amount of a fee to be charged for use of the institution's facilities for purposes of engaging in expressive activities, an institution of higher education may consider only content-neutral and viewpoint-neutral criteria related to the needs of the event, such as:

(1)  the proposed venue and the expected size of the audience;

(2)  any anticipated need for campus security;

(3)  any necessary accommodations; and

(4)  any relevant history of compliance or noncompliance by the requesting student, student group or organization, or employee with the institution's policy adopted under Subsection (g) and any other relevant policies.

(k)  An institution of higher education shall make reasonable efforts to ensure the safety of speakers invited to speak on campus by a student enrolled at the institution, a student group or organization at the institution, or an employee of the institution.

(l)  Not later than the first anniversary of the date that a violation of this section is alleged to have occurred at an institution of higher education, the attorney general or a person whose expressive rights have been violated under this section may bring an action for injunctive relief to compel the institution to comply with this section or to recover compensatory damages, court costs, and reasonable attorney's fees. In an action for damages brought under this subsection, the court:

(1)  shall, if the court finds that an institution of higher education has violated this section, award the aggrieved person the greater of:

(A)  the amount of the person's compensatory damages; or

(B)  $1,000; and

(2)  may award reasonable attorney's fees to the prevailing party.

(m)  For purposes of computing the limitation period under Subsection (l), each day of a continuing violation of this section, including each day that a rule or policy of an institution of higher education that violates this section remains in effect, constitutes a separate violation.

(n)  In addition to the cause of action under Subsection (l), a person whose expressive rights are affected by a rule or policy adopted by an institution of higher education may file suit against the institution for declaratory judgment in the manner provided by Chapter 37, Civil Practice and Remedies Code.

(o)  An institution of higher education's sovereign immunity to suit and from liability is waived and abolished to the extent of liability created under this section.

(p)  Each institution of higher education shall make the institution's policies adopted in accordance with this section available to students enrolled at and employees of the institution by:

(1)  including the policies in the institution's student handbook and personnel handbook;

(2)  providing a copy of each policy to students during the institution's freshman or transfer student orientation; and

(3)  posting the policies on the institution's Internet website.

(q)  Each institution of higher education shall develop materials, programs, and procedures to ensure that the institution's employees responsible for educating or disciplining students understand the requirements of this section and all policies adopted by the institution in accordance with this section.

(r)  The governing board of each institution of higher education or university system shall create a committee on free expression to address free speech issues at the institution or institutions governed by the board. The committee must consist of at least five members. Not later than September 1 of each year, the committee shall prepare and submit to the governor, the members of the legislature, and the governing board a report on free speech issues that arose at the institution or institutions during the preceding academic year. The report must include, for each institution governed by the board:

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

(2)  a summary of the institution's handling of free speech issues, including any disciplinary action taken related to the policies adopted under this section and any explanations regarding those actions provided to the committee by the institution as required under this section;

(3)  an analysis of any substantial difficulties, controversies, or successes in maintaining the institution's official position of neutrality on matters of public concern; and

(4)  any recommendations for legislative or other action.

SECTION 3.  Not later than September 1, 2019, the governing board of each public institution of higher education or university system shall create the committee on free expression required under Section 51.9315, Education Code, as added by this Act. Each governing board's committee shall prepare and submit its initial report required under that section not later than September 1, 2020.

SECTION 4.  Not later than August 1, 2020, each public institution of higher education shall adopt the policy required under Section 51.9315(g), Education Code, as added by this Act.

SECTION 5.  This Act takes effect September 1, 2019.