S.B. No. 18

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)  "Benefit" includes:

(A)  recognition by or registration with an institution of higher education;

(B)  the use of an institution of higher education's facilities for meetings or speaking purposes;

(C)  the use of channels of communication controlled by an institution of higher education; and

(D)  funding sources made generally available to student organizations at an institution of higher education.

(2)  "Expressive activities" means any speech or expressive conduct protected by the First Amendment to the United States Constitution or by Section 8, Article I, Texas Constitution, and includes assemblies, protests, speeches, the distribution of written 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)  "Student organization" includes any organization that is composed mostly of students enrolled at an institution of higher education and that receives a benefit from the institution.

(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:

(1)  recognizing freedom of speech and assembly as central to the mission of institutions of higher education; and

(2)  ensuring that all persons may assemble peaceably on the campuses of institutions of higher education for expressive activities, including to listen to or observe the expressive activities of others.

(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 to engage in 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 disrupt the functioning of the institution.

(d)  Notwithstanding Subsection (c), an institution of higher education may adopt a policy that imposes 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 narrowly tailored to serve a significant institutional interest;

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

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

(4)  allow members of the university community to 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)  Each institution of higher education shall adopt a policy detailing students' rights and responsibilities regarding expressive activities at the institution. The policy must:

(1)  allow:

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

(B)  student organizations and faculty to, subject to Subsection (h), invite speakers to speak on campus;

(2)  establish disciplinary sanctions for students, student organizations, or faculty who unduly interfere with the expressive activities of others on campus;

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

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

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

(g)  An institution of higher education may not take action against a student organization or deny the organization any benefit generally available to other student organizations at the institution on the basis of a political, religious, philosophical, ideological, or academic viewpoint expressed by the organization or of any expressive activities of the organization.

(h)  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:

(1)  may consider only content-neutral and viewpoint-neutral criteria related to the needs of the event, such as:

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

(B)  any anticipated need for campus security;

(C)  any necessary accommodations; and

(D)  any relevant history of compliance or noncompliance by the requesting student organization or faculty member with the institution's policy adopted under Subsection (f) and any other relevant policies; and

(2)  may not consider any anticipated controversy related to the event.

(i)  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.

(j)  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.

(k)  Not later than December 1, 2020, each institution of higher education shall prepare, post on the institution's Internet website, and submit to the governor and the members of the legislature a report regarding the institution's implementation of the requirements under this section. This subsection expires September 1, 2021.

SECTION 3.  Not later than August 1, 2020, each public institution of higher education shall adopt the policy required under Section 51.9315(f), Education Code, as added by this Act.

SECTION 4.  This Act takes effect September 1, 2019.

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I hereby certify that S.B. No. 18 passed the Senate on March 20, 2019, by the following vote:  Yeas 31, Nays 0; May 20, 2019, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2019, House granted request of the Senate; May 25, 2019, Senate adopted Conference Committee Report by the following vote:  Yeas 29, Nays 1.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Secretary of the Senate

I hereby certify that S.B. No. 18 passed the House, with amendments, on May 17, 2019, by the following vote:  Yeas 97, Nays 49, one present not voting; May 22, 2019, House granted request of the Senate for appointment of Conference Committee; May 25, 2019, House adopted Conference Committee Report by the following vote:  Yeas 106, Nays 37, one present not voting.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Chief Clerk of the House

Approved:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_            Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_           Governor