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et al.

H.B. No. 2100

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the protection of expressive activities at public
3 institutions of higher education.

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

5 SECTION 1. The legislature finds that:

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

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

14 SECTION 2. Subchapter Z, Chapter 51, Education Code, is
15 amended by adding Section 51.9315 to read as follows:

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

18 (1) "Employee" has the meaning assigned by Section
19 51.934.

20 (2) "Expressive activities" means any speech or
21 expressive conduct protected by the First Amendment to the United
22 States Constitution or Section 8, Article I, Texas Constitution,
23 and includes assemblies, protests, speeches, the distribution of
24 written or visual material, the carrying of signs, and the

1 circulation of petitions. The term does not include commercial
2 speech.

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

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

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

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

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

14 (b) It is the policy of this state and the purpose of this
15 section to protect the expressive rights of persons guaranteed by
16 the constitutions of the United States and of this state by ensuring
17 that:

18 (1) all persons lawfully present on the campus of an
19 institution of higher education may engage in, observe, or listen
20 to expressive activities; and

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

25 (c) An institution of higher education shall:

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

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

4 (A) is not unlawful; and

5 (B) does not materially and substantially:

6 (i) disrupt the functioning of the
7 institution; or

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

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

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

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

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

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

26 (e) Subsections (c) and (d) do not:

27 (1) limit the right of student expression at other

1 campus locations; or

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

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

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

12 (1) allow:

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

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

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

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

26 (4) encourage the free and open exchange of ideas,
27 regardless of the content or viewpoint expressed, in classrooms and

1 all other campus locations;

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

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

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

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

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

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

27 (B) be committed to furthering the group's or

1 organization's mission or purpose;

2 (10) contain statements that:

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

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

12 (i) discuss any problem; and

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

16 (11) contain a statement that, pursuant to Section
17 51.935, a person commits an offense if the person, alone or in
18 concert with others, intentionally engages in disruptive activity
19 on the campus or property of an institution of higher education;

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

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

23 (h) Each institution of higher education shall adopt
24 procedures for the institution's disciplinary process regarding an
25 alleged violation of the institution's student code of conduct
26 involving expressive activities and provide notice of those
27 procedures to each student enrolled at the institution. At a

1 minimum, the procedures must entitle the student alleged to have
2 violated the institution's student code of conduct to:

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

5 (2) review evidence supporting the allegation;

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

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

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

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

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

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

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

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

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

9 (2) any anticipated need for campus security;

10 (3) any necessary accommodations; and

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

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

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

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

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

6 (B) \$1,000; and

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

9 (m) For purposes of computing the limitation period under
10 Subsection (1), each day of a continuing violation of this section,
11 including each day that a rule or policy of an institution of higher
12 education that violates this section remains in effect, constitutes
13 a separate violation.

14 (n) In addition to the cause of action under Subsection (1),
15 a person whose expressive rights are affected by a rule or policy
16 adopted by an institution of higher education may file suit against
17 the institution for declaratory judgment in the manner provided by
18 Chapter 37, Civil Practice and Remedies Code.

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

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

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

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

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

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

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

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

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

1 (3) an analysis of any substantial difficulties,
2 controversies, or successes in maintaining the institution's
3 official position of neutrality on matters of public concern; and
4 (4) any recommendations for legislative or other
5 action.

6 SECTION 3. Not later than September 1, 2019, the governing
7 board of each public institution of higher education or university
8 system shall create the committee on free expression required under
9 Section 51.9315, Education Code, as added by this Act. Each
10 governing board's committee shall prepare and submit its initial
11 report required under that section not later than September 1,
12 2020.

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

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