

By: Geren

H.B. No. 3395

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) "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

1 assigned by Section 61.003.

2 (4) "Student organization" includes any organization
3 that is composed mostly of students enrolled at an institution of
4 higher education and that receives a benefit from the institution.

5 (b) It is the policy of this state to protect the expressive
6 rights of persons guaranteed by the constitutions of the United
7 States and of this state by:

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

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

13 (c) An institution of higher education shall:

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

16 (2) permit any person to engage in expressive
17 activities in those areas of the institution's campus freely, as
18 long as the person's conduct:

19 (A) is not unlawful; and

20 (B) does not materially and substantially
21 disrupt the functioning of the institution.

22 (d) Notwithstanding Subsection (c), an institution of
23 higher education may adopt a policy that imposes reasonable
24 restrictions on the time, place, and manner of expressive
25 activities in the common outdoor areas of the institution's campus
26 if those restrictions:

27 (1) are narrowly tailored to serve a significant

1 institutional interest;

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

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

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

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

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

14 (1) allow students, student organizations, and
15 faculty to:

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

19 (B) subject to Subsection (h), invite speakers to
20 speak on campus;

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

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

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

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

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

8 (h) In determining whether to approve a speaker to speak on
9 campus or in determining the amount of a fee to be charged for use of
10 the institution's facilities for purposes of engaging in expressive
11 activities, an institution of higher education:

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

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

17 (B) any anticipated need for campus security;

18 (C) any necessary accommodations; and

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

23 (2) may not consider:

24 (A) the anticipated attendance of persons not
25 intending to participate in the event; or

26 (B) any anticipated controversy related to the
27 event.

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

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

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

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

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

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

23 SECTION 2. Not later than August 1, 2020, each public
24 institution of higher education shall adopt the policy required
25 under Section 51.9315(f), Education Code, as added by this Act.

26 SECTION 3. This Act takes effect September 1, 2019.