

By: Huffman, et al.

S.B. No. 18

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 assemble or distribute written material without a permit or other  
8 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:

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

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

21 (2) establish disciplinary sanctions for students,  
22 student organizations, or faculty who unduly interfere with the  
23 expressive 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 organization or faculty  
21 member with the institution's policy adopted under Subsection (f)  
22 and any other relevant policies; and

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

25           (i) Each institution of higher education shall make the  
26 institution's policies adopted in accordance with this section  
27 available to students enrolled at and employees of the institution

1 by:

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

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

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

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

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

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

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