

**Senate File 2344 - Introduced**

SENATE FILE 2344  
BY COMMITTEE ON EDUCATION

(SUCCESSOR TO SSB 3120)

**A BILL FOR**

1 An Act relating to speech and expression at public institutions  
2 of higher education, providing for remedies, and including  
3 effective date provisions.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 261H.1 Definitions.

2 As used in this chapter, unless the context otherwise  
3 requires:

4 1. "*Benefit*" with respect to a student organization at  
5 a public institution of higher education means any of the  
6 following:

- 7 a. Recognition.
- 8 b. Registration.
- 9 c. Use of facilities for meetings or speaking purposes.
- 10 d. Use of channels of communication.
- 11 e. Access to funding sources that are otherwise available  
12 to other student groups.

13 2. "*Campus community*" means students, administrators,  
14 faculty, and staff at a public institution of higher education  
15 and guests invited to a public institution of higher education  
16 by the institution's students, administrators, faculty, or  
17 staff.

18 3. "*Outdoor areas of campus*" means the generally accessible  
19 outside areas of campus where students, administrators,  
20 faculty, and staff at a public institution of higher education  
21 are commonly allowed, such as grassy areas, walkways, or other  
22 similar common areas and does not include areas outside health  
23 care facilities, veterinary medicine facilities, a facility  
24 or outdoor area used by the institution's athletics program  
25 or teams, or other outdoor areas where access is restricted  
26 to a majority of the campus community. In recognition of the  
27 healing environment that is essential to its clinical purposes,  
28 the areas outside health care facilities are not a traditional  
29 or designated public forum.

30 4. "*Public institution of higher education*" means a community  
31 college established under chapter 260C or an institution of  
32 higher learning governed by the state board of regents.

33 5. "*Student*" means an individual who is enrolled on a  
34 full-time or part-time basis at a public institution of higher  
35 education.

1     6. "*Student organization*" means a group officially  
2 recognized at or officially registered by a public institution  
3 of higher education, or a group seeking such official  
4 recognition or official registration, comprised of students who  
5 are admitted and in attendance at the public institution of  
6 higher education, and who receive, or are seeking to receive,  
7 student organization benefits or privileges through the public  
8 institution of higher education.

9     Sec. 2. NEW SECTION.   **261H.2 Policy adoption.**

10     The state board of regents and the board of directors of each  
11 community college shall adopt a policy that includes all of the  
12 following statements:

13     1. That the primary function of an institution of higher  
14 education is the discovery, improvement, transmission, and  
15 dissemination of knowledge by means of research, teaching,  
16 discussion, and debate. This statement shall provide that, to  
17 fulfill this function, the institution must strive to ensure  
18 the fullest degree of intellectual freedom and free expression  
19 allowed under the first amendment to the Constitution of the  
20 United States.

21     2. *a.* That it is not the proper role of an institution of  
22 higher education to shield individuals from speech protected by  
23 the first amendment to the Constitution of the United States,  
24 which may include ideas and opinions the individual finds  
25 unwelcome, disagreeable, or even offensive.

26     *b.* That it is the proper role of an institution of higher  
27 education to encourage diversity of thoughts, ideas, and  
28 opinions and to encourage, within the bounds of the first  
29 amendment to the Constitution of the United States, the  
30 peaceful, respectful, and safe exercise of first amendment  
31 rights.

32     3. That students and faculty have the freedom to discuss  
33 any problem that presents itself, assemble, and engage in  
34 spontaneous expressive activity on campus, within the bounds  
35 of established principles of the first amendment to the

1 Constitution of the United States, and subject to reasonable  
2 time, place, and manner restrictions that are consistent with  
3 established first amendment principles.

4 4. That the public areas of campus of an institution  
5 of higher education are traditional public forums, open on  
6 the same terms to any invited speaker subject to reasonable  
7 time, place, and manner restrictions that are consistent  
8 with established principles of the first amendment to the  
9 Constitution of the United States.

10 Sec. 3. NEW SECTION. **261H.3 Protected activities.**

11 1. Noncommercial expressive activities protected under the  
12 provisions of this chapter include any lawful oral or written  
13 means by which members of the campus community may communicate  
14 ideas to one another, including all forms of peaceful assembly,  
15 protests, speeches including by invited speakers, distribution  
16 of literature, and circulating petitions.

17 2. A member of the campus community who wishes to engage in  
18 noncommercial expressive activity in outdoor areas of campus  
19 shall be permitted to do so freely, subject to reasonable  
20 time, place, and manner restrictions that are consistent  
21 with established principles of the first amendment to the  
22 Constitution of the United States, and as long as the member's  
23 conduct is not unlawful and does not disrupt the functioning  
24 of the public institution of higher education, subject to the  
25 protections of subsection 1. The public institution of higher  
26 education may designate other areas of campus available for  
27 use by the campus community according to institutional policy,  
28 but in all cases access to designated areas of campus must be  
29 granted on a content-neutral and viewpoint-neutral basis within  
30 the bounds of established first amendment principles.

31 3. A public institution of higher education shall not deny  
32 benefits or privileges available to student organizations based  
33 on the viewpoint of a student organization or the expression  
34 of the viewpoint of a student organization by the student  
35 organization or its members protected by the first amendment to

1 the Constitution of the United States. In addition, a public  
2 institution of higher education shall not deny any benefit  
3 or privilege to a student organization based on the student  
4 organization's requirement that the leaders of the student  
5 organization affirm or agree to the student organization's  
6 beliefs or standards of conduct or further the student  
7 organization's mission.

8 4. A public institution of higher education may prohibit  
9 student organizations from discriminating against members  
10 or prospective members on the basis of any protected status  
11 recognized by federal or state law.

12 5. This section shall not be interpreted as limiting the  
13 right of student expression in a counter demonstration held on  
14 campus as long as the conduct at the counter demonstration is  
15 not unlawful and does not materially and substantially prohibit  
16 the free expression rights of others on campus or disrupt the  
17 functioning of the public institution of higher education,  
18 subject to reasonable time, place, and manner restrictions  
19 that are consistent with established principles of the first  
20 amendment to the Constitution of the United States.

21 6. Nothing in this chapter shall be interpreted as  
22 preventing public institutions of higher education from  
23 prohibiting, limiting, or restricting expression that is not  
24 protected by the first amendment to the Constitution of the  
25 United States.

26 **Sec. 4. NEW SECTION. 261H.4 Public forums on campus —**  
27 **freedom of association.**

28 The outdoor areas of campuses of public institutions of  
29 higher education in this state shall be deemed traditional  
30 public forums. Public institutions of higher education  
31 may maintain and enforce reasonable time, place, and manner  
32 restrictions consistent with established principles of the  
33 first amendment to the Constitution of the United States. Such  
34 restrictions shall allow for members of the campus community  
35 to engage in spontaneous expressive activity and to distribute

1 literature.

2 Sec. 5. NEW SECTION. 261H.5 Remedies — statute of  
3 limitations — immunity.

4 1. A member of the campus community aggrieved by a violation  
5 of this chapter may file a complaint with the governing body of  
6 the public institution of higher education.

7 2. A member of the campus community aggrieved by a violation  
8 of this chapter may assert such violation as a defense  
9 or counterclaim in a disciplinary action or in a civil or  
10 administrative proceeding brought against the member of the  
11 campus community.

12 3. A member of the campus community shall bring a claim for  
13 violation of this chapter pursuant to this section not later  
14 than one year after the day the cause of action accrues.

15 4. This section shall not be interpreted to limit any other  
16 remedies available to a member of the campus community.

17 5. Nothing in this section shall be construed to make  
18 any administrator, officer, employee, or agent of a public  
19 institution of higher education personally liable for acts  
20 taken pursuant to the individual's official duties.

21 Sec. 6. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
22 3, shall not apply to this Act.

23 Sec. 7. EFFECTIVE DATE. This Act, being deemed of immediate  
24 importance, takes effect upon enactment.

25 EXPLANATION

26 The inclusion of this explanation does not constitute agreement with  
27 the explanation's substance by the members of the general assembly.

28 This bill relates to public forums, freedom of expression,  
29 and freedom of association at community colleges and regents  
30 universities.

31 DEFINITIONS. The bill defines "benefit", "campus  
32 community", "outdoor areas of campus", "public institution of  
33 higher education", "student", and "student organization" for  
34 purposes of the new Code chapter established by the bill.

35 POLICY ADOPTION. The bill requires the boards governing

1 the public postsecondary institutions to adopt a policy that  
2 includes statements describing the functions and roles of  
3 institutions with regard to knowledge; protected speech;  
4 the freedom to discuss within the bounds of the established  
5 principles of the first amendment to the United States  
6 Constitution; freedom to assemble and engage in spontaneous  
7 expressive activities subject to reasonable time, place,  
8 and manner restrictions; and public areas of campuses as  
9 traditional public forums.

10 PROTECTED ACTIVITIES. Protected activities include  
11 noncommercial expressive activities including oral or written  
12 means to communicate ideas, including all forms of peaceful  
13 assembly, protests, speeches including by invited speakers,  
14 distribution of literature, and circulating petitions. A  
15 member of the campus community who wishes to engage in  
16 noncommercial expressive activity on campus shall be permitted  
17 to do so freely subject to reasonable time, place, and  
18 manner restrictions. However, nothing in the bill shall be  
19 interpreted as preventing the institutions from prohibiting,  
20 limiting, or restricting unprotected expression.

21 A public postsecondary institution shall not deny a student  
22 organization any benefit or privilege available to any other  
23 student organization. However, nothing in the bill shall be  
24 interpreted as limiting the right of student expression in a  
25 counter demonstration held on campus so long as the conduct  
26 at the counter demonstration is not unlawful and does not  
27 materially and substantially prohibit the free expression  
28 rights of others or disrupt the functioning of the institution.

29 PUBLIC FORUMS ON CAMPUS — FREEDOM OF ASSOCIATION. The  
30 bill requires that the outdoor areas of campuses of public  
31 postsecondary institutions be deemed traditional public forums.  
32 The institutions may maintain and enforce reasonable time,  
33 place, and manner restrictions consistent with first amendment  
34 established principles.

35 REMEDIES, STATUTE OF LIMITATIONS, AND IMMUNITY PROVISIONS.

1 An aggrieved member of the campus community may bring an action  
2 against the institution responsible for a violation of the  
3 Code chapter and seek appropriate relief, and may assert such  
4 violation as a defense or counterclaim.

5 Such person has one year after the day the cause of action  
6 accrues to bring a claim for violation of the Code chapter.  
7 However, nothing in the bill shall be interpreted to limit any  
8 other available remedies to a member of the campus community.

9 STATE MANDATE — INAPPLICABILITY PROVISION. The bill may  
10 include a state mandate as defined in Code section 25B.3. The  
11 bill makes inapplicable Code section 25B.2, subsection 3, which  
12 would relieve a political subdivision from complying with a  
13 state mandate if funding for the cost of the state mandate is  
14 not provided or specified. Therefore, political subdivisions  
15 are required to comply with any state mandate included in the  
16 bill.

17 EFFECTIVE DATE. The bill takes effect upon enactment.