

Senate Study Bill 3120 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON EDUCATION BILL BY
CHAIRPERSON SINCLAIR)

A BILL FOR

1 An Act relating to speech and expression at public institutions
2 of higher education, providing for civil remedies, and
3 including 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 group means any of
5 the following:

6 a. Recognition.

7 b. Registration.

8 c. The use of facilities of the public institution of higher
9 education for meetings or speaking purposes.

10 d. The use of channels of communication.

11 e. Funding sources that are otherwise available to other
12 student groups at the public institution of higher education.

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

18 3. "*Outdoor areas of campus*" means the generally accessible
19 outside areas of campus where students, administrators,
20 faculty, and staff at the public institution of higher
21 education are commonly allowed, such as grassy areas, walkways,
22 or other similar common areas and does not include outdoor
23 areas where access is restricted to a majority of the campus
24 community.

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

28 5. "*Student*" means any person who is enrolled on a full-time
29 or part-time basis at a public institution of higher education.

30 6. "*Student organization*" means an officially recognized
31 group at a public institution of higher education, or a group
32 seeking official recognition, comprised of students who are
33 admitted and in attendance at the public institution of higher
34 education, and who receive, or are seeking to receive, benefits
35 through the public institution of higher education.

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

2 The state board of regents and the board of directors of each
3 community college shall adopt a policy that includes all of the
4 following statements:

5 1. That the primary function of an institution of higher
6 education is the discovery, improvement, transmission, and
7 dissemination of knowledge by means of research, teaching,
8 discussion, and debate. This statement shall provide that, to
9 fulfill this function, the institution must strive to ensure
10 the fullest degree of intellectual freedom and free expression.

11 2. That it is not the proper role of the institution to
12 shield individuals from speech protected by the first amendment
13 of the Constitution of the United States, including, without
14 limitation, ideas and opinions the individuals find unwelcome,
15 disagreeable, or even deeply offensive.

16 3. That students and faculty have the freedom to discuss
17 any problem that presents itself, as the first amendment of
18 the Constitution of the United States permits, within the
19 limits of reasonable viewpoint-neutral and content-neutral
20 restrictions on time, place, and manner of expression that
21 are consistent with this chapter and that are necessary to
22 achieve a significant institutional interest; provided that
23 these restrictions are clear, published, and provide for ample
24 alternative means of expression.

25 4. That students and faculty shall be permitted to assemble
26 and engage in spontaneous expressive activity as long as
27 such activity is not unlawful and does not materially and
28 substantially disrupt the functioning of the institution,
29 subject to the reasonable restrictions described in subsection
30 3.

31 5. That the public areas of campuses of the institution
32 are traditional public forums, open on the same terms to any
33 invited speaker.

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

35 1. Expressive activities protected under the provisions

1 of this chapter include any lawful verbal or written means
2 by which individuals may communicate ideas to one another,
3 including all forms of peaceful assembly, protests, speeches
4 including by invited speakers, distribution of literature,
5 carrying signs, and circulating petitions.

6 2. Any person who wishes to engage in noncommercial
7 expressive activity on campus shall be permitted to do so
8 freely, as long as the person's conduct is not unlawful and
9 does not materially and substantially disrupt the functioning
10 of the public institution of higher education, subject to the
11 protections of subsection 1.

12 3. A public institution of higher education shall not deny
13 a belief-based student organization any benefit or privilege
14 available to any other student organization, or otherwise
15 discriminate against a belief-based student organization, based
16 on the expression of the belief-based student organization
17 or on the expression of any member of the belief-based
18 organization, and shall not deny any such benefit or privilege
19 based on a requirement that the leaders or members of the
20 belief-based student organization do any of the following:

21 a. Affirm and adhere to the belief-based student
22 organization's sincerely held beliefs.

23 b. Comply with the belief-based student organization's
24 standards of conduct.

25 c. Further the belief-based student organization's mission
26 or purpose as defined by the belief-based student organization.

27 4. This section shall not be interpreted as limiting the
28 right of student expression in a counter demonstration held
29 elsewhere on campus as long as the conduct at the counter
30 demonstration is not unlawful and does not materially and
31 substantially prohibit the free expression rights of others on
32 campus or materially and substantially disrupt the functioning
33 of the public institution of higher education.

34 5. This section shall not be interpreted as preventing
35 public institutions of higher education from prohibiting,

1 limiting, or restricting expression that the first amendment
2 of the Constitution of the United States does not protect,
3 including but not limited to a threat of serious harm and
4 expression directed or likely directed to provoke imminent
5 unlawful actions; or from prohibiting harassment, including
6 but not limited to expression which is so severe, pervasive,
7 and subjectively and objectively offensive that the expression
8 unreasonably interferes with an individual's access to
9 educational opportunities or benefits provided by a public
10 institution of higher education.

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

13 The outdoor areas of campuses of public institutions of
14 higher education in this state shall be deemed traditional
15 public forums. Public institutions of higher education
16 may maintain and enforce reasonable time, place, and manner
17 restrictions narrowly tailored to serve a significant
18 institutional interest only when such restrictions employ
19 clear, published, viewpoint-neutral and content-neutral
20 criteria, and provide for ample alternative means of
21 expression. Such restrictions shall allow for members of the
22 campus community to engage in spontaneous expressive activity
23 and to distribute literature.

24 Sec. 5. NEW SECTION. **261H.5 Educational materials —**
25 **responsibilities — report.**

26 1. A public institution of higher education shall do all of
27 the following:

28 *a.* Publicize the institution's policies, regulations, and
29 expectations of students regarding free expression, public
30 forums, and freedom of assembly on campus in handbooks, on the
31 institution's internet site, and through orientation programs.

32 *b.* Develop materials, programs, and procedures to ensure
33 that persons who have responsibility for the discipline
34 or education of students, including but not limited to
35 administrators, campus police officers, residence life

1 officials, and professors, understand the policies,
2 regulations, and duties of public institutions of higher
3 education regarding free expression on campus consistent with
4 this chapter.

5 2. A public institution of higher education shall publicly
6 post on the institution's internet site and, by December 1
7 annually, submit to the governor and the general assembly, a
8 report detailing actions taken by the institution to comply
9 with this chapter. The internet posting must be concise and
10 easily accessible, searchable by keywords and phrases, and
11 accessible to the public without requiring registration, a
12 username, a password, or any other user identification. The
13 posting shall include all of the following:

14 a. A description of any barriers to or incidents of
15 disruption of free expression occurring on campus, including
16 but not limited to attempts to block or prohibit invited
17 speakers and investigations into students or student
18 organizations regarding their speech. The description shall
19 include the nature of each barrier or incident, as well
20 any disciplinary action taken against members of the campus
21 community determined to be responsible for the specific barrier
22 or incident. The description shall not contain any student's
23 personally identifiable information.

24 b. Any other information the public institution of higher
25 education deems valuable for the public to evaluate whether
26 free expression rights for all members of the campus community
27 have been equally protected and enforced consistent with this
28 chapter.

29 c. Information pertaining to any lawsuit filed or proceeding
30 within the current academic year against the institution
31 for an alleged violation of a right of a member of the
32 campus community guaranteed under the first amendment of the
33 Constitution of the United States. The information shall
34 include a copy of the complaint in the lawsuit which shall also
35 be submitted by the institution to the governor and the general

1 assembly within thirty days of the filing of the lawsuit.

2 Sec. 6. NEW SECTION. 261H.6 Civil remedies — statute of
3 limitations — immunity.

4 1. A person or student organization aggrieved by a violation
5 of this chapter may bring an action against the public
6 institution of higher education responsible for the violation
7 and seek appropriate relief, including but not limited to
8 injunctive relief, monetary damages, reasonable attorney fees,
9 and court costs.

10 2. A person or student organization aggrieved by a violation
11 of this chapter may assert such violation as a defense
12 or counterclaim in a disciplinary action or in a civil or
13 administrative proceeding brought against the person or student
14 organization.

15 3. A person or student organization shall bring suit for
16 violation of this chapter pursuant to this section not later
17 than one year after the day the cause of action accrues. For
18 purposes of calculating the one-year limitation period, each
19 day that the violation persists, and each day that a policy in
20 violation of this chapter remains in effect, shall constitute
21 a new violation of this chapter and, therefore, a new day on
22 which a cause of action accrues.

23 4. This section shall not be interpreted to limit any other
24 remedies available to a person or student organization.

25 5. The state waives immunity under the eleventh amendment
26 of the Constitution of the United States and consents to suit
27 in a federal court for lawsuits arising out of this chapter.
28 A public institution of higher education that violates this
29 chapter is not immune from suit or liability for the violation.

30 Sec. 7. IMPLEMENTATION OF ACT. Section 25B.2, subsection
31 3, shall not apply to this Act.

32 Sec. 8. EFFECTIVE DATE. This Act, being deemed of immediate
33 importance, takes effect upon enactment.

34 EXPLANATION

35 The inclusion of this explanation does not constitute agreement with

1 the explanation's substance by the members of the general assembly.

2 This bill relates to public forums, freedom of expression,
3 and freedom of association at community colleges and regents
4 universities.

5 DEFINITIONS. The bill defines "benefit", "campus
6 community", "outdoor areas of campus", "public institution of
7 higher education", "student", and "student organization" for
8 purposes of the new Code chapter established by the bill.

9 POLICY ADOPTION. The bill requires the boards governing
10 the public postsecondary institutions to adopt a policy that
11 includes statements describing the functions and rules of
12 institutions with regard to learning; protected speech; the
13 freedom to discuss issues within the limits of reasonable
14 viewpoint-neutral and content-neutral restrictions on time,
15 place, and manner of expression; freedom to assemble and engage
16 in spontaneous expressive activities that are not unlawful and
17 do not materially and substantially disrupt the functioning of
18 the institution; and public areas of campuses as traditional
19 public forums.

20 PROTECTED ACTIVITIES. Protected activities include any
21 expressive activities protected under the provisions of lawful
22 verbal or written means to communicate ideas, including all
23 forms of peaceful assembly, protests, speeches and invited
24 speakers, distribution of literature, carrying signs, and
25 circulating petitions. Any person who wishes to engage in
26 noncommercial expressive activity on campus shall be permitted
27 to do so freely as long as the conduct is not unlawful and not
28 materially and substantially disruptive. However, nothing in
29 the bill shall be interpreted as preventing the institutions
30 from prohibiting, limiting, or restricting unprotected
31 expression.

32 A public postsecondary institution shall not deny a
33 belief-based student organization any benefit or privilege
34 available to any other student organization. However, nothing
35 in the bill shall be interpreted as limiting the right of

1 student expression in a counter demonstration held elsewhere
2 on campus so long as the conduct at the counter demonstration
3 is not unlawful and does not prohibit the free expression
4 rights of others or materially and substantially disrupt the
5 functioning of the institution of higher education.

6 PUBLIC FORUMS ON CAMPUS — FREEDOM OF ASSOCIATION. The
7 bill requires that the outdoor areas of campuses of public
8 postsecondary institutions be deemed traditional public
9 forums. The institutions may maintain and enforce reasonable
10 restrictions only when such restrictions employ clear,
11 published, viewpoint-neutral and content-neutral criteria, and
12 provide for ample alternative means of expression.

13 EDUCATIONAL MATERIALS — RESPONSIBILITIES — REPORT.
14 Each public postsecondary institution must publicize the
15 institution's policies, regulations, and expectations of
16 students regarding free expression, public forums, and freedom
17 of assembly on campus in handbooks, on the institution's
18 internet site, and through orientation programs; must develop
19 educational materials, programs, and procedures, relating
20 to free expression, for persons who have responsibility for
21 discipline or education of students; and must publicly post
22 on its internet site and submit to the governor and the
23 general assembly information that includes a description of
24 any barriers to or incidents of disruption of free expression
25 as well as information pertaining to any lawsuit filed or
26 proceeding within the current academic year against the
27 institution for an alleged violation of a right of a member of
28 the campus community guaranteed under the first amendment of
29 the Constitution of the United States.

30 CIVIL REMEDIES, STATUTE OF LIMITATIONS, AND IMMUNITY
31 PROVISIONS. Any aggrieved person or student organization may
32 bring an action against the institution responsible for a
33 violation of the Code chapter and seek appropriate relief, and
34 may assert such violation as a defense or counterclaim.

35 A person has one year after the day the cause of action

1 accrues to bring suit for violation of the Code chapter.
2 However, nothing in the bill shall be interpreted to limit any
3 other available remedies to a person.

4 The state waives immunity under the 11th amendment of the
5 Constitution of the United States and consents to suit in a
6 federal court for lawsuits arising out of the Code chapter.

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

15 EFFECTIVE DATE. The bill takes effect upon enactment.