

**House File 2387 - Introduced**

HOUSE FILE 2387

BY UPMEYER

**A BILL FOR**

1 An Act relating to speech and expression at certain eligible  
2 institutions and accredited private institutions of higher  
3 education, and providing for remedies.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 261.9, subsection 1, unnumbered  
2 paragraph 1, Code 2020, is amended to read as follows:

3 "*Accredited private institution*" means an institution of  
4 higher learning located in Iowa which is operated privately  
5 and not controlled or administered by any state agency or  
6 any subdivision of the state and which meets the criteria in  
7 paragraphs "a" and "b" and all of the criteria in paragraphs "d"  
8 through "~~i~~" "j", except that institutions defined in paragraph  
9 "c" of **this subsection** are exempt from the requirements of  
10 paragraphs "a" and "b":

11 Sec. 2. Section 261.9, subsection 1, Code 2020, is amended  
12 by adding the following new paragraph:

13 NEW PARAGRAPH. *j.* Complies with chapter 261H.

14 Sec. 3. Section 261.9, subsection 3, unnumbered paragraph  
15 1, Code 2020, is amended to read as follows:

16 "*Eligible institution*" means an institution of higher  
17 learning located in Iowa which is operated privately and  
18 not controlled or administered by any state agency or any  
19 subdivision of the state, which is not exempt from taxation  
20 under section 501(c)(3) of the Internal Revenue Code, and which  
21 meets all of the criteria in **subsection 1**, paragraphs "d"  
22 through "~~i~~" "j", and the criteria in paragraphs "a" or "b" as  
23 follows:

24 Sec. 4. Section 261H.1, Code 2020, is amended to read as  
25 follows:

26 **261H.1 Definitions.**

27 As used in **this chapter**, unless the context otherwise  
28 requires:

29 1. "*Benefit*" with respect to a student organization at a  
30 ~~public~~ an institution of higher education means any of the  
31 following:

32 *a.* Recognition.

33 *b.* Registration.

34 *c.* Use of facilities for meetings or speaking purposes.

35 *d.* Use of channels of communication.

1 e. Access to funding sources that are otherwise available  
2 to other student groups.

3 2. "*Campus community*" means students, administrators,  
4 faculty, and staff at a ~~public~~ an institution of higher  
5 education and guests invited to a ~~public~~ an institution of  
6 higher education by the institution's students, administrators,  
7 faculty, or staff.

8 3. "*Institution of higher education*" means a community  
9 college established under chapter 260C, an accredited private  
10 institution or an eligible institution as defined in section  
11 261.9, or an institution of higher learning governed by the  
12 state board of regents.

13 ~~3.~~ 4. "*Materially and substantially disrupts*" means when  
14 a person, with the intent to or with knowledge of doing  
15 so, engages in violent or other disorderly conduct that  
16 significantly hinders a previously scheduled or reserved  
17 activity occurring on university grounds, buildings, and  
18 facilities. "*Materially and substantially disrupts*" does not  
19 include conduct that is protected under the first amendment  
20 to the Constitution of the United States, including but not  
21 limited to lawful protests and counterprotests.

22 ~~4.~~ 5. "*Outdoor areas of campus*" means the generally  
23 accessible outside areas of campus where students,  
24 administrators, faculty, and staff at a ~~public~~ an institution  
25 of higher education are commonly allowed, such as grassy areas,  
26 walkways, or other similar common areas and does not include  
27 areas outside health care facilities including both stand-alone  
28 facilities and mixed-use facilities that are embedded within  
29 another facility, veterinary medicine facilities, a facility  
30 or outdoor area used by the institution's athletics program  
31 or teams, or other outdoor areas where access is restricted  
32 to a majority of the campus community. In recognition of  
33 the healing environment that is essential to its clinical  
34 purposes, the areas outside health care facilities, including  
35 both stand-alone facilities and mixed-use facilities that are

1 embedded within another facility, are not designated public  
2 forums.

3 ~~5. "Public institution of higher education" means a community~~  
4 ~~college established under [chapter 260C](#) or an institution of~~  
5 ~~higher learning governed by the state board of regents.~~

6 6. "Student" means an individual who is enrolled on a  
7 full-time or part-time basis at a ~~public~~ an institution of  
8 higher education.

9 7. "Student organization" means a group officially  
10 recognized at or officially registered by a ~~public~~ an  
11 institution of higher education, or a group seeking such  
12 official recognition or official registration, comprised of  
13 students who are admitted and in attendance at the ~~public~~  
14 institution of higher education, and who receive, or are  
15 seeking to receive, student organization benefits or privileges  
16 through the ~~public~~ institution of higher education.

17 Sec. 5. Section 261H.3, subsections 2, 3, 4, and 5, Code  
18 2020, are amended to read as follows:

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

33 3. A ~~public~~ An institution of higher education shall not  
34 deny benefits or privileges available to student organizations  
35 based on the viewpoint of a student organization or the

1 expression of the viewpoint of a student organization by the  
2 student organization or its members protected by the first  
3 amendment to the Constitution of the United States. In  
4 addition, a ~~public~~ an institution of higher education shall not  
5 deny any benefit or privilege to a student organization based  
6 on the student organization's requirement that the leaders  
7 of the student organization agree to and support the student  
8 organization's beliefs, as those beliefs are interpreted  
9 and applied by the organization, and to further the student  
10 organization's mission.

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

22 5. This chapter shall not be interpreted as preventing  
23 ~~public~~ institutions of higher education from prohibiting,  
24 limiting, or restricting expression that the first amendment  
25 to the Constitution of the United States does not protect,  
26 including but not limited to a threat of serious harm and  
27 expression directed or likely directed to provoke imminent  
28 unlawful actions; or from prohibiting harassment, including  
29 but not limited to expression which is so severe, pervasive,  
30 and subjectively and objectively offensive that the expression  
31 unreasonably interferes with an individual's access to  
32 educational opportunities or benefits provided by a ~~public~~ an  
33 institution of higher education.

34 Sec. 6. Section 261H.4, subsections 1, 2, and 3, Code 2020,  
35 are amended to read as follows:

1 1. The outdoor areas of campuses of ~~public~~ institutions  
2 of higher education in this state shall be deemed public  
3 forums. ~~Public institutions~~ Institutions of higher education  
4 may maintain and enforce clear, published, reasonable  
5 viewpoint-neutral time, place, and manner restrictions that are  
6 narrowly tailored in furtherance of a significant institutional  
7 interest, but shall allow members of the campus community to  
8 engage in spontaneous expressive activity and to distribute  
9 literature. Restrictions instituted by a ~~public~~ an institution  
10 of higher education under **this section** shall provide for ample  
11 alternative means of expression.

12 2. Except as provided in **this chapter**, and subject to  
13 reasonable time, place, and manner restrictions, a ~~public~~ an  
14 institution of higher education shall not designate any area  
15 of campus a free-speech zone or otherwise create policies  
16 restricting expressive activities to a particular outdoor area  
17 of campus.

18 3. Nothing in **this chapter** shall be construed to grant  
19 individuals the right to engage in conduct that intentionally,  
20 materially, and substantially disrupts the expressive activity  
21 of a person or student organization if the ~~public~~ institution  
22 of higher education has reserved space in an outdoor area of  
23 campus for activity by the person or student organization in  
24 accordance with **this chapter**.

25 Sec. 7. Section 261H.5, subsections 1 and 5, Code 2020, are  
26 amended to read as follows:

27 1. A member of the campus community aggrieved by a violation  
28 of **this chapter** may file a complaint with the governing body of  
29 the ~~public~~ institution of higher education.

30 5. Nothing in **this section** shall be construed to make any  
31 administrator, officer, employee, or agent of a ~~public~~ an  
32 institution of higher education personally liable for acts  
33 taken pursuant to the individual's official duties.

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 makes the requirements relating to public forums,  
3 freedom of expression, and freedom of association at community  
4 colleges and regents universities under Code chapter 261H  
5 applicable to accredited private institutions and for-profit  
6 eligible institutions whose students receive state assistance  
7 through the Iowa tuition grant program administered by the  
8 college student aid commission.

9       Under the bill, institutions that are not in compliance with  
10 Code chapter 261H do not meet the definitions for "accredited  
11 private institution" and "eligible institution", making  
12 students attending such institutions ineligible for Iowa  
13 tuition grants.

14       Currently under Code chapter 261H, public postsecondary  
15 institutions must adopt a policy that includes statements  
16 describing the functions and roles of institutions with regard  
17 to knowledge, protected speech, the freedom to discuss, and  
18 the freedom to assemble and engage in spontaneous expressive  
19 activities subject to reasonable time, place, and manner  
20 restrictions; describes protected activities; establishes the  
21 outdoor areas of campuses of public postsecondary institutions  
22 must be deemed public forums; and establishes remedies, a  
23 statute of limitations, and immunity provisions.